

*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.14863 OF 2004

% 06--4-2006

S. Nagender .. Petitioner

And

\$ The Government of A.P. rep. By its
Principal Secretary and 29 others ..
Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioners : Sri Timothy and Sri Tarakam

^ Counsel for respondents : Advocate General and Sri Srinivas Reddy

?CASES REFERRED :

2001(2) SCC 365

² 2001(1) SCC 118

³ AIR 1982 S.C. 149

⁴ 2000(1) ALT 46

⁵ AIR 1993 S.C. 477

⁶ AIR 1995 A.P. 248

⁷ AIR 1999 S.C. 3471

⁸ 1994(3) ALT 41 (DB)

⁹ (1991) 1 SCC 212

¹⁰ 1994(2) SCC 204

¹¹ 2002(6) ALD 387

¹² 2003(6) ALD 214

¹³ 2004(4) SCC 714

¹⁴ 2004(4) SCC 748

¹⁵ 1998(7) SCC 654

¹⁶ 1984(1) Lab. & I.C.1053

¹⁷ 1992(3) ALT 99 (FB)

¹⁸ AIR 1967 S.C. 884

¹⁹ AIR 1991 S.C. 537

²⁰ AIR 1994 S.C. 1654

²¹ 1991(1) SCC 319

²² 1972 SLR 477 (Allahabad)

²³ 1973(2) An.W.R. 119

²⁴ 1969(2) An.W.R. 465

²⁵ AIR 1986 S.C. 210

²⁶ AIR 1986 S.C. 431

²⁷ AIR 1965 S.C. 280

²⁸ AIR 1964 S.C. 1854

²⁹ 1992(3) SCC 526

³⁰ AIR 1990 S.C. 1031

³¹ 1995(5) SCC 482

³² 2002(3) L.S. 397

³³ AIR 1964 S.C. 254

³⁴ AIR 1961 S.C. 564

³⁵ AIR 1979 S.C. 1628

³⁶ AIR 1980 S.C. 1789

³⁷ AIR 1976 S.C. 490

- ³⁸ AIR 1974 S.C. 2249
- ³⁹ AIR 1952 S.C. 181
- ⁴⁰ AIR 1970 S.C. 679
- ⁴¹ 1991(1) SCC 212
- ⁴² 1994(2) SCC 204
- ⁴³ 2004(3) ALD 411
- ⁴⁴ 2004(5) ALT 634
- ⁴⁵ 2004(3) ALT 17
- ⁴⁶ 1995(2) SCC 117
- ⁴⁷ 2003(8) SCC 440
- ⁴⁸ (2001(3) SCC 635 = AIR 2001 S.C. 1447)
- ⁴⁹ (AIR 2000 S.C. 2487 = 2000(6) SCC 608)
- ⁵⁰ 2002(6) SCC 252 = AIR 2002 S.C. 2642
- ⁵¹ 2004(7) SCC 670
- ⁵² AIR 2003 S.C. 1344 = 2003(4) SCC 289
- ⁵³ 2003(5) SCC 437
- ⁵⁴ 2005(1) ALT 69
- ⁵⁵ AIR 1987 S.C. 251
- ⁵⁶ AIR 1991 S.C. 1153
- ⁵⁷ AIR 1997 S.C. 128
- ⁵⁸ 2003(12) SCC 627 = AIR 2004 S.C. 1194)
- ⁵⁹ 2004(2) SCC 150 = AIR 2004 S.C. 1402
- ⁶⁰ (2002) 4 SCC 638
- ⁶¹ AIR 1962 S.C. 1183
- ⁶² (2004) 2 SCC 173
- ⁶³ (2003) 6 SCC 675
- ⁶⁴ (2004) 3 SCC 682
- ⁶⁵ AIR 1950 S.C. 222

66 AIR 1954 S.C. 440

⁶⁷ AIR 1966 S.C. 81

⁶⁸ 1995(2) SCC 584

⁶⁹ 1995(5) SCC 457

⁷⁰ 1995(1) SCC 421

HON'BLE SRI JUSTICE J.CHELAMESWAR

HON'BLE SRI JUSTICE P.S. NARAYANA

HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No.14863 of 2004

&

W.P.M.P.No.7444 of 2005

(per P.S.Narayana.,J)

“The profession of law is called a noble profession. It does not remain noble merely by calling it as such unless there is a continued, corresponding and expected performance of this noble profession”

observed the Apex Court in **Satish Sharma Vs. Bar Council of A.P.**
. In **Ramon Services Pvt. Ltd. Vs. Subhash Kapoor** the learned
Judges held that the lawyers are a force for the preservance and

strengthening of Constitutional Government as they are guardians of the modern legal system. While dealing with the locus standi of lawyers in maintaining the Public Interest Litigation in relation to the matters concerned with the independence of judiciary in **S.P. Gupta and others Vs. President of India and others** it was held that there can be no doubt that the practicing lawyers have a vital interest in the independence of the judiciary and if any unconstitutional or illegal action is taken by the State or any public authority which has the effect of impairing the independence of the judiciary, they would certainly be interested in challenging the Constitutionality or illegality of such action. In **Venkat Rao Vs. Deputy Transport Commissioner and Secretary, Regional Transport Authority, Kakinada** a learned Judge of this Court while dealing with the aspect of role of lawyers, observed at paras 47, 48 and 49 :

“In view of the general importance of the question as to the Role of Lawyers, I propose to make few observations before parting away with the case. A lawyer is an integral part of administration of justice. Courts to a very large extent depend upon the learning, scholarship and wisdom of the Counsel appearing in matter. The Courts lean heavily upon the Counsel for guidance. True, every Advocate has right to give such advice to his client, which he bona fide believes to be true and correct. It may be part of his duty. But he has important responsibilities to the Court as well as to his client. A lawyer cannot be viewed as a hired gun. The Advocate is more than a mouthpiece. He owes allegiance to a higher cause.

In the same case (1) supra – Rondel Vs. Worsley (1957(1) QB 443) Lord Pearce observed “that a lawyer has a duty to use the weapons of advocacy ‘in the pursuit of justice and to elucidate the truth in the public interest with an approach which is as based in favour of his client’s contentions, as public considerations allow (1969 1 AC 191). He becomes an officer of the Court and, like the Court itself, an instrument or agency to advance the ends of justice.” The experience of the Courts suggest that they rely heavily upon the integrity and fairness of the Counsel in the presentation of the case and drafting of the pleadings. In Rondel’s case Lord Morris observed that “to a certain extent every advocate is an *amicus curiae*”. Such is the importance attached to the legal profession by the Court.

No Advocate has any right to withhold any material information

and the relevant facts which may have bearing upon the result of the lis before the Court. There is no such privilege conferred upon any Counsel. Advocates are not entitled to advise their clients to withhold or suppress material information and relevant facts from the Court. The duty of an advocate is on the other hand is to advise the litigants to state all relevant facts.”

2. The question raised in the present Writ Petition is in relation to the appointment of Government Pleaders in Andhra Pradesh High Court, Andhra Pradesh Administrative Tribunal etc., on the ground that certain appointments are illegal, contrary to the Rules, non-compliance of the different conditions specified by the relevant Rules inclusive of inadequate representation to the Scheduled Castes and Scheduled Tribes etc., despite the rule of reservation which is expected to be followed in such appointments.

SUBMISSIONS OF SRI THIMOTHY :

3. Sri Timothy, the learned Counsel representing the petitioners had traced the historical background relating to the appointment of Law Officers in the High Court, Administrative Tribunal etc., and would maintain that public element is attached to these offices or the posts and hence necessarily the Rules in force may have to be followed. The learned Counsel also made certain submissions relating to the eligibility criteria, the condition relating to the Income-tax assessments and on facts pointed out that certain of the Government Pleaders do not satisfy the eligibility criteria. Several factual aspects had been narrated at length and Rules 4(3)(c), (7), 12, 13 14 of G.O.Ms.No.187 dated 6-12-2000 had been specifically pointed out. The learned Counsel also made certain submissions relating to the aspect of employment and appointment and also the aspect of public office, civil post and tenure post and the tests to be satisfied in relation to either a public office or a civil post. The learned Counsel also pointed out to Articles 60, 162 and 335 of the Constitution of India and would maintain that having framed the Rules the Government is bound to follow the Rules and the stand taken by the

Government that these are only guidelines, definitely cannot be accepted since once such Rules are framed by them even in exercise of Article 162 of the Constitution of India though not under Article 309 of the Constitution of India, the Government is bound to follow such Rules and cannot escape taking a stand that those are mere executive instructions and hence not binding on the Government. The learned Counsel also made certain submissions relating to the policy, change of policy and the parameters and the limitations in this regard in relation to the power of the Government and also the power of the Courts to interfere with such decisions. The learned Counsel while making further submissions would maintain that as far as the violation of Presidential Order and zonalisation is concerned the said question needs no serious consideration at the hands of this Court. However, the learned Counsel would comment that in the light of the definition of "Law Officer" all the posts cannot be treated as one unit and there are separate categories and these are to be treated as separate units and horizontal and vertical reservations are to be given. The Counsel also would draw the attention of this Court to the preamble of the Constitution of India and stressed on the aspect of social justice. The learned Counsel pointed out to relevant portions of the counter affidavit and also the reply affidavits filed and would contend that it is clear that certain of the Government Pleaders are having less than three years I.T. Assessments and in this view of the matter also these appointments are to be held as invalid. The learned Counsel also placed reliance on the decision of the Apex Court in **Indra Sawhney Vs. Union of India** and also the decision of the Full Bench of this Court in **A.P. State Backward Class Welfare Association Vs. State of A.P.** **Backward Classes Welfare (P-2) Department** and **Ajit Singh Vs. State of Punjab** . The learned Counsel also placed strong reliance on a Judgment of the Division Bench of this Court in W.A.Nos.139 & 140 of 2003 (**State of A.P. Vs. Lakshma Reddy and others, dated 16-9-2005**) and would contend that in the light of the same, the instructions laid down in G.O.Ms.No.187 to be followed. The learned Counsel pointed out that the words "at least three years"

in the Instruction 4(3)(c) to be understood as immediately preceding three years and there cannot be any discontinuity thereof. The learned Counsel also pointed out that certain had produced only bank challans and certain had filed certificates and at any rate whatever may be the interpretation that can be given to the words “at least three years”, respondents 13, 23, 24 and 29 are not eligible for appointment and this would show that there was total non-application of mind while making the appointments. The learned Counsel also placed reliance on certain other decisions to substantiate his contentions.

SUBMISSIONS OF SRI TARAKAM :

4. Sri Tarakam, the learned Senior Counsel representing the implead-petitioner in W.P.M.P.No.7444/20045 would maintain that in the light of the facts narrated in detail, the implead-petitioner is vitally interested in the present lis and hence the implead-petitioner to be brought on record. The learned Senior Counsel while further elaborating his submissions had made a serious attempt to draw a distinction between ‘instructions’ and ‘rules’ which may be issued by the Government in exercise of powers under Article 162 of the Constitution of India. The learned Senior Counsel would maintain that the expression ‘rules’ would stand definitely on a higher footing when compared to the ‘instructions’ and hence the violation of such rules to be viewed with all seriousness by Courts of law. The learned Senior Counsel also pointed out to the percentage of reservation in the old rule and the present rule. The learned Senior Counsel also would contend that the office of the Government Pleader is a public office and hence whether it is a civil post or not would be irrelevant for the purpose of Articles 15 and 16 of the Constitution of India and the term ‘office’ would be sufficient. The learned Senior Counsel also pointed out to the fact that the rules of the year 1967 were framed while exercising powers under Article 309 of the Constitution of India and also had traced the series of events and the relevant G.Os. in this

regard commencing from the beginning till G.O.Ms.No.187 dated 6-12-2000. The learned Counsel in elaboration had pointed out to G.O.Ms.Nos.14, 15, 55, 57, 118, 158, and G.O.Rt.No.1575 and also would comment that having introduced the rule of reservation at a particular point of time, when the same is withdrawn without any acceptable reason the same is bad in law. The learned Counsel also pointed out to Article 16(4) of the Constitution of India and would contend that it is no doubt an enabling provision but in the light of rule 22 of A.P. State and Subordinate Service Rules, in the light of the background of the different Constitutional provisions, the rule of reservation is bound to be followed even in the appointments of Government Pleaders. The learned Senior Counsel also would maintain that the original rules were made with a view to translate the Constitutional philosophy into a reality and this Constitutional imperative to be followed and the Counsel also pointed out to the decision of the Cabinet in this regard and withdrawal of the same without any justifiable reason. The learned Counsel also would contend that making or unmaking of rule to be based on a valid reason, if not arbitrariness would come in and the same would be violative of Article 14 of the Constitution of India. The learned Senior Counsel also would point out that though in policy matters the power of judicial review would be limited, when there is infraction of the Constitutional provisions when the Court is satisfied relating to the arbitrariness the said decisions also can be set at naught by Courts of law. The learned Counsel also in detail pointed out to several of the present Rules governing the field and Articles 15, 16 and 338 of the Constitution of India. The learned Counsel also pointed out to G.O.Ms.No.118, which was kept in abeyance in G.O.Rt.No.1575 without any just or proper reason. The learned Counsel also placed reliance on certain decisions.

SUBMISSIONS MADE BY ADVOCATE GENERAL :

5 .The learned Advocate General while making elaborate submissions would maintain that the appointments of respondents 2 to 30 in the Writ Petition as Government Pleaders are being

questioned on certain grounds and in the light of the fact that an endeavour should be made to follow these rules as far as possible these rules cannot be said to be mandatory since merit and suitability also may have to be taken into consideration and as far as possible the guidelines specified in the rules may have to be followed. The learned Advocate General also had explained the Presidential Order in detail and would contend that the same is not relevant in the present context but however since an attempt was made to touch this aspect the same is being explained. The learned Counsel also had pointed out that 1967 Rules were framed under Article 309 of the Constitution of India. The historical events by virtue of which the old rules had undergone a metamorphosis ultimately culminating into the present Rules had been explained in detail. The directions given by the learned single Judge of this Court in W.P.No.9652/83 and subsequent thereto the view expressed by the Division Bench in **V. Ramesh Vs. Government of Andhra Pradesh** also was explained in detail. The relevant provisions of the Constitution of India and the rules had been pointed out in detail. It was specifically pointed out that G.O.Ms.No.187 as such had not been challenged but what had been challenged is the violation thereof and hence the limited question which may have to be decided is that whether these rules can be said to be mandatory or these rules are to be followed as far as possible in the light of the language employed in the rules. The Judgment of the Division Bench of this Court in the decision referred **(8) supra** was explained in detail. Under what circumstances W.P.No.2003/2000 was disposed of by the learned Judge of this Court also had been explained. The concept of “office”, “public office”, “post”, “civil post”, relevancy of Articles 309, 310, 311, 15, 16 and 162 of the Constitution of India and also Rules 4 and 7 of the rules specified in G.O.Ms.No.187 and the relevant rules and the State and Subordinate Service Rules also had been pointed out. The learned Advocate-General no doubt explained the zonalisation vis-à-vis the Presidential Order and would comment that in the light of the stand taken by the Counsel for the writ petitioner, lengthy submissions need not be advanced on this aspect. However, the merit and suitability to

be observed had been stressed. The decisions **Shrilekha Vidyarthi Vs. State of U.P.** and **State of U.P. Vs. U.P. State Law Officers Association** had been well explained and it was contended that these decisions were rendered in the light of the arbitrary actions on the touchstone of Article 14 of the Constitution of India. The learned Advocate General also would submit that in **Indra Sawhney's** case referred (5) supra the concept of technical posts had been discussed and the reservations to such posts had been deprecated and if the role of lawyers if taken into consideration these posts require specialization in the field of law and hence these can be treated as technical posts. The ratio and the observations made in **Indra Sawhney's** case referred (5) supra had been highlighted and the relevant portions of several decisions of this Court also had been brought to the notice of this Court. The learned Advocate General also had stressed on the words "every endeavour to be made" and also the words "as far as possible" and would contend that in the light of the same it cannot be said that the observance of these rules either can be said to be imperative or mandatory. The learned Counsel also would maintain that even if certain of the respondents prima facie do not satisfy the requirement of being income tax assesseees for at least three years prior to their appointments, as on today such respondents also satisfy the requirement and hence inasmuch as these are only instructions more in the nature of guidelines, on that ground the directions prayed for cannot be granted. Reliance also had been placed on **P.Sesha Rao Vs. Government of Andhra Pradesh** , **Government of Andhra Pradesh Vs. Pushpinder Kaur** , **State of U.P. Vs. Johri Mal** , **State of U.P. Vs. Netra Pal Singh** and **Rajendra Singh Vs. State of U.P.** to substantiate his contentions.

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Submissions of Sri Srinivas Reddy :

6. The learned Counsel representing the Government Pleaders had taken this Court through the counter affidavit filed by the Government

and also in detail would explain what would be an Assessment Year for the purpose of reckoning Income-tax Assessments and had pointed out to the relevant portions of the counter affidavit filed by Ms.Rekha Prasad in particular. The learned Counsel also had explained the position of respondents 13, 23, 24 and 29 and also explained about the income tax assessments in relation to respondents 4 and 21. The learned Counsel also would maintain that the intention in specifying the requirement of being an income tax assessee may have to be taken into consideration. The Counsel also would maintain that the words “at least three years” may have to be interpreted as any three years prior to the appointment. Some additional material relating to the Income Tax assessments of Sri Suryanarayana and Sri Janakiram Reddy also had been produced and certain submissions were made in this regard. The learned Counsel also had drawn the attention of this Court to Section 2(7), Section 139(4) of the Income Tax Act and had explained that in the facts and circumstances of the case, the respondents are not disqualified from being appointed as Government Pleaders. The learned Counsel also would submit that in the light of the stand taken by the Government in the counter affidavit and also in the light of the material placed before this Court, it can be taken that none of the appointments are in violation of the Rules aforesaid and even otherwise it is for the Government to see and act in conformity with the said Rules and these Rules being only executive instructions cannot be enforced by issuance of positive directions while exercising the writ jurisdiction. The learned Counsel also pointed out to variations in the counter affidavit filed by the Government and also in the counter affidavits filed by the respective Government Pleaders and would contend that in the light of the clear stand taken by the Government Pleaders the Writ Petition is liable to be dismissed.

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7. Heard the Counsel on record.

8. A practicing Advocate belonging to Scheduled Caste (C) category

and having a standing of about 12 years at the Bar had filed the Writ Petition praying for issuance of a writ, order or direction more in the nature of writ of mandamus calling for connected records relating to the appointment of respondents 2 to 30 as Government Pleaders of High Court of Andhra Pradesh, A.P. Administrative Tribunal, Land Grabbing Court, Central Administrative Tribunal and declare the same as illegal, improper, unjust, contrary to law and violative of Articles 15(4), 16(4) and 335 of the Constitution of India, set aside the appointments and direct the 1st respondent to make appointments by following Rule 4(3)(c), Rule 7(a), 7(b), 7(c), 7(d) of G.O.Ms.No.187, Law Department, dated 6-12-2000 and A.P. Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order 1975 and pass such other suitable orders.

9. The writ petitioner pleaded in the affidavit filed in support of the Writ Petition as hereunder :

It was stated that the 1st respondent by G.O.Rt.No.994 to 1019, Law (L) Department dated 10-6-2004 had appointed 26 Government Pleaders in the High Court of A.P. and A.P. Administrative Tribunal and they are as follows :

S.No.	Name	Category	Native District
1	Mrs.Niraja Sudhakar Reddy	O.C.	Chittoor
2	R.Satyanarayana Raju	O.C.	East Godavari
3	SriAddepalli Suryanarayana	O.C.	East Godavari
4	Sri D.Panduranga Reddy	O.C.	Kurnool
5	Sri Gande Anandam	O.C.	Medak
6	Sri Katikaneni Ramesh	O.C.	Hyderabad
7	Sri M.Vishnuvardhan Reddy	O.C.	Nalgonda
8	Sri K.K.Mahinder Reddy	O.C.	Karimnagar
9	Sri P.Lakshma Reddy	O.C.	Medak
10	Sri N.Ashok Kumar	B.C.	Mahaboobnagar
11	Sri N.Muralidhar Reddy	O.C.	Nellore
12	Ms.S.Rekha Prasad	O.C.	Anantapur
13	Sri D.S.N.V. Prasada Babu	O.C.	West Godavari

14	Sri Fazal Yousufuddin	B.C.	Hyderabad
15	Sri Sripada Prabhakar	O.C.	Hyderabad
16	Sri P.Vinod Kumar	S.C.	Hyderabad
17	Sri E.Seshagiri Rao	B.C.	Khammam
18	Ms.Kambhampati Malleshwari	O.C.	Prakasam
19	Sri K.Janakiram Reddy	O.C.	Kurnool

20	Sri Korrapati Subba Rao	O.C.	Prakasam
21	Sri A.Giridhar Rao	O.C.	Mahaboobnagar
22	Sri S.Ganghadara Reddy	O.C.	Cuddapah
23	Sri Godi Babji	S.C.	West Godavari
24	Ms.B.V. Seshaveni	O.C.	East Godavari
25	Sri Ch.Srinivas	O.C.	Krishna
26	Sri G.Seenakumar	B.C.	Chittoor

It was further stated that the 1st respondent on 29-6-2004 had appointed two Government Pleaders in Land Grabbing Court and one Government Pleader in Central Administrative Tribunal and they are as follows :

S.No.	Name	Category	Native District
27	Sri A.Abhishek Reddy	O.C.	Ranga Reddy
28	Sri J.Satya Prasad	S.C.	East Godavari
29	Sri D.Y. Shetty	B.C.	East Godavari

It was stated that these appointments are governed by G.O.Ms.No.187, Law Department, dated 6-12-2000 and as per rule 4(3) of the said G.O. no person shall be included in the panel for the appointment as Government Pleader or Special Counsel unless he (a) has atleast 10 years standing as an Advocate of a High Court or two or more such High Courts in succession (b) is below 65 years of age on the date of inclusion in the panel, and (c) is an income tax assessee for a period of atleast 3 years prior to his appointment, or (d) has practiced at the Bar for a period of

five years in the case of appointment of members of the A.P. Higher Judicial Service or the A.P. Secretariat Service. It was stated that Rule 7 of the said G.O.Ms.No.187 lays down the guidelines for selection of law officers. It was further stated that in para-8 of A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order 1975, Table is given showing the Local Area and the ratio to be given as follows :

Sl.No.	Zone	Local Area	Ratio
1	I	District of Srikakulam and Visakhapatnam	13
2	II	Districts of East and West Godavari and Krishna	18
3	III	Districts of Guntur, Prakasam and Nellore	15
4	IV	Districts of Chittoor, Cuddapah, Kurnool, Anantapur	18
5	V	Districts of Adilabad, Karimnagar, Warangal and Khammam	15
6	VI	Districts of Ranga Reddy (Excluding such areas as form part of the City of Hyderabad with effect from 15 th August 1978), Nizamabad, Mahaboobnagar, Medak and Nalgonda	17
7	VII	City of Hyderabad	4

It was further stated that as per Article 335 of the Constitution of India the claim of the members of Scheduled Caste and Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or State shall be

taken into consideration. It is the Constitutional duty of the State to take into consideration the claims of the members of Scheduled caste and Scheduled Tribes in the matter of appointment (subject of course to the consideration of the efficiency of the administration) and this duty is to be exercised in keeping with the Directive principles laid down in Article 46 to promote with special care the educational and economic interests of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. When by way of discharging the aforesaid duty the Government issues an administrative instruction but a department fails to comply with such instruction the Court may issue directions to carry out such instruction even though it is non-statutory. The said Article 335 extends to the agencies of the State under Article 12. It was further stated that it is reliably learnt that some of the Government Pleaders who were appointed are not income tax assesses for a period of three years prior to their appointments contrary to Rule 4(3)(c) of G.O.Ms.No.187 and hence they are not eligible as per G.O.Ms.No.187. As per rule 7(a) of G.O.Ms.No.187, the selection shall be based primarily on merit and suitability. Merit means meritorious candidates from all categories including Schedule Castes, Schedule Tribes and Backward Classes. It does not mean that only the candidates from forward castes alone can be considered under open competition. The 1st respondent had not properly assessed the merit and suitability under open competition and hence the 1st respondent has to explain the criteria and the yardstick taken for the appointment as Government Pleaders under the open competition. It was further stated that the 1st respondent had appointed the Government Pleaders without following the rule of reservation as prescribed in rule 7(b) of G.O.Ms.No.187 and the said details are as hereunder :

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Sl.No	Category	Ratio	To be appointed as per G.O.Ms.No.187	Actually appointed	Remarks
1	O.C.		14	21	+7
2	B.C.	25%	8	5	-3
3	S.C.	15%	5	3	-2
4	S.T.	6%	2	0	-2

It was further stated that the 1st respondent made appointments without following rule 7(d) of G.O.Ms.No.187 and the A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order 1975 and the said details are as hereunder :

Sl.No.	Zone	Ratio	To be appointed as per the Presidential Order	Actually appointed	Remarks
1	1	13%	4	0	-4
2	2	18%	5	8	+3
3	3	15%	4	3	-1
4	4	18%	5	2	-3
5	5	15%	4	2	-2
6	6	17%	5	6	+1
7	7	4%	1	4	+3

10. A counter affidavit was filed by the 1st respondent wherein it was pleaded as hereunder :

It was specified that the Government issued administrative executive instructions under Article 166(1) and (2) of the Constitution of India providing guidelines for appointment and conditions of service of Law Officers. After certain amendments in supercession of all the earlier G.Os. the Government finally issued G.O.Ms.No.187 dated 6-12-2000 which are called A.P. Law Officers (Appointment and Conditions of Service) Instructions, 2000 which have come into force with effect from the date of publication in Gazette and they are in force as of now. It was stated that keeping in view the said Instructions several appointments had been made to various Law

Officer posts including Government Pleaders in High Court of A.P., A.P. Administrative Tribunal, Special Court established under A.P. Land Grabbing (Prohibition) Act 1982 and also one special Counsel on Central Administrative Tribunal, Hyderabad Bench besides two Special Counsel for Commercial Taxes in June/July 2004. The Assistant Government Pleaders were also appointed to assist the Government Pleaders. Public Prosecutors and Additional Public Prosecutors were also appointed. Some Standing Counsel were also appointed and the process is still on. It is specifically stated that the Government while filling up the posts of Law officers had followed G.O.Ms.No.187, dated 6-12-2000. It was further stated that the present Writ Petition had been filed by one of the Advocates claiming to be practicing for the last 12 years contending that certain provisions of G.O.Ms.No.187 were not followed and violated Articles 15(4), 16(4) and 335 of the Constitution of India in the matter of appointment of Government Pleaders in the High Court of A.P., A.P. administrative Tribunal, Land Grabbing (Prohibition) Court and Central Administrative Tribunal. The Writ Petition itself is misconceived inasmuch as the whole affidavit and the prayer revolve around the appointment of Government Pleaders only. The main grievance is that reservation had not been properly followed and the ratio had not been maintained Zonal wise in the matter of appointment to the post of Government Pleaders. The word 'Government Pleader' is different from 'Law Officer'. As per the definition of 'Law Officer' under Instruction 2(iv) 'Law Officer' means a Government Pleader or an Assistant Government Pleader or a Public Prosecutor or Additional Public Prosecutor or Special Public Prosecutor or a Special Counsel. As per the definition under Instruction 2(iii) 'Government Pleader' means a person appointed for work on the civil side in the High Court of Andhra Pradesh, Andhra Pradesh Administrative Tribunal, Andhra Pradesh State Consumer Disputes Redressal Commission or District Courts and includes an Additional Government Pleader or Special Government Pleader or Government Pleader cum Public Prosecutor in the Special Court established under the Andhra Pradesh Land Grabbing (Prohibition) Act 1982 or the Government Pleader in any other State Level Court or Tribunal. A reading of both the definitions categorically shows that the Government Pleader is only one component within the meaning of Law Officer. The main grievance of the petitioner is that there is violation of Instruction No.4 and Instruction No.7. A reading of the said Instructions show that they deal with the Law officers but not exclusively with Government Pleaders. The petitioner failed to understand the difference between the Government Pleader vis-à-vis the Law officer

and as such the whole Writ Petition is misconceived and deserves to be dismissed. It was also further stated that one of the grounds of the writ petitioner is that under instruction 4(3)(c) one has to be an Income-tax Assessee for a period of at least three years prior to his appointment as Government Pleader/Special Counsel and that several Government Pleaders/Special Counsel do not fulfill the said requirement and as such the appointments are bad in law. The particulars of PAN of the persons referred in the writ affidavit had been mentioned showing that the said contention is baseless and ill-founded.

Sl.No.	Respo- ndent No.	Name of the Government Pleader	PAN No.	Assessee for the years
1	2	Mrs.Neeraja Sudhakar Reddy	AAQPB91138E	2001-2004
2	3	R.Satyanarayana Raju	ACHPR8779A	2001-2004
3	4	Addepalli Suryanarayana	ABGPA629F	2002-2004
4	5	D.Panduranga Reddy	APKPD6107C	2001-2004
5	6	Gande Anandam	AARPG8372Q	2001-2004
6	7	Katikaneni Ramesh	AJLPK5587C	2000-2004
7	8	M.Vishnuvardhan Reddy	AFGPM5033G	2000-2003
8	9	K.K.Mahinder Reddy	AJSPR2522J	1999-2004
9	10	P.Lakshma Reddy	AFTPP4852P	2001-2004
10	11	N.Ashok Kumar	ASPN8232K	2002-2004
11	12	K.Muralidhar Reddy	AIUPK3849H	2000-2003
12	13	Ms.S.Rekha Prasad	ARXPS3967Q	2002-2003
13	14	D.S.N.V.Prasad Babu	Not allotted	2002-2003
14	15	Fazal Yousuffuddin	AAJPY1959K	2001-2004
15	16	Sripada Prabhakar	AIYPS9733J	1999-2003
16	17	P.Vinod Kumar	AHGPP9209H	2001-2004
17	18	E.Seshagiri Rao	AABPE0903B	2002-2004
18	19	Ms.Kambhampati Malleswari	ABCOPK5917D	2001-2004
19	20	K.Janakiram Reddy	AIEPK4026A	2002-2005

20	21	Korrapati Subba Rao	ADOPK6207E	2000-2003
21	22	A.Giridhar Rao	AAJPR2803E	1997-1998
22	23	S.Gangadhara Reddy	AXUPS6219C	2002-2004
23	24	Godi Babji	AHPG6762G	2003-2004
24	25	Ms.B.V.Seshaveni	ADHPB1236H	2001-2004
25	26	Ch.Srinivas	ABF7336R	1998-2003
26	27	G.Seenakumar	AEKPG0969A	2001-2004
27	28	A.Abhishek Reddy	AAMPA4570H	2000-2003
28	29	J.Satya Prasad	AFNPJ8039C	2002-2004
29	30	D.Y.Shetty	AERPD3317C	1998-2003

It was also stated that G.O.Ms.No.187 dated 6-12-2000 through which instructions were issued are only for the purpose of guidelines and it is well settled law that instructions/guidelines are not mandatory and are only directory in nature and non-adherence of instructions does not automatically make the whole exercise invalid. It was specifically stated that the instructions do not confer any enforceable right on the individuals. With regard to the ground of non-following of Instruction No.7 it had been stated that a reading of Instruction No.7 shows that it deals with the guidelines for selection of Law Officers. As they are only guidelines as stated above, they are only directory but not mandatory in nature. Further a reading of Instruction No.7 shows that the said guidelines mentioned in Instruction No.7 need not be followed as far as possible. The Hon'ble Supreme Court dealt with the expression/phrase as far as possible and held that when such an expression is used it connotes that the discretion to follow the guidelines is vested with the concerned authorities. Accordingly the Government made all efforts and appointed 21 Government Pleaders in the High Court of Andhra Pradesh and 5 Government Pleaders in A.P. Administrative Tribunal and 4 Special Government Pleaders also had been appointed to assist the Advocate-General, Two Government Pleaders in the Special Court established under Land Grabbing (Prohibition) Act and one Government Pleader in Central Administrative Tribunal apart from two Special Standing Counsel exclusively for dealing with commercial tax matters. Sixty Assistant Government Pleaders had been appointed to assist the Government Pleaders. Public Prosecutor and three Additional Public Prosecutors also had been appointed. Altogether 99

Law Officers had been appointed in accordance with G.O.Ms.No.187 dated 6-12-2000. Out of the said Law Officers 22 belong to Backward Classes, 10 belong to scheduled castes, 6 belong to Minorities and 2 belong to Scheduled Tribes. While making selection/appointment every endeavour had been made to provide equitable representation to the members of S.Cs., S.Ts. and B.Cs. and Minorities. Hence the allegation of the petitioner that proper representation was not given to the above sections had been denied as not correct. It was also further stated that at any rate the grievance of the petitioner that Instruction 7(a) was not followed is factually incorrect inasmuch as selection was based primarily on merit and suitability alone and it is not correct to contend that there was no proper assessment made before making appointment to the posts of Government Pleaders. With regard to the contention that Instruction 7(b) had not been followed it is stated that the same deals with providing reservations to S.Cs., S.Ts. and B.Cs. to an extent of 15%, 6% and 25% respectively. It is stated that it is mentioned in Instruction 7(b) itself that the authority has to make every endeavour to provide equitable reservation for SCs/STs/BCs and it is not as though as rule of thumb the reservation has to be provided in the ratio mentioned therein. The word 'endeavour' mentioned in Instruction 7(b) read with expression "as far as possible" mentioned in Instruction 7 shows in unmistakable terms that providing ratio mentioned therein is not mandatory but the selection/appointment of Law Officers shall be based primarily on merit and suitability and every endeavour is being made for providing proper representation to the members of B.Cs./S.Cs./S.Ts. It was further stated that the post of Law officer is not a civil post. When the matter fell for consideration before this Court in this regard a Division Bench of this Court in the decision referred (8) supra category held that persons belonging to weaker sections do not have Constitutionally enforceable right to approach the Court for a direction to the State to effect reservations. It was further held that the post of Law Officer does not fall under the State services and the rule of reservation as contemplated under Rule 22 of A.P. State and Subordinate Service Rules are not applicable as the Law Officers are not employees of the State Government. The question of following the rule of reservation will come into play only when the post concerned fall within the meaning of State services. In the said decision referred (8) supra this Court further held relying upon the Judgment of Supreme Court referred (5) supra that the Law Officer's post is a technical post and non-providing reservation to SCs/STs/BCs to the posts of Law Officers is not unconstitutional. This particular aspect that Law officer's post is not a civil post is

reiterated in various decisions of the Hon'ble Supreme Court and the latest being the decision referred (13) supra. It was stated that in view of the settled law the post of Government Pleader/Law Officer does not fall within the meaning of 'State service' and as such the question of providing reservation as in the case of State Services in clinical precision does not arise. The ratio laid down in State of Uttar Pradesh Vs. U.P. State Law Officers Association (AIR 1994 S.C. 1654) also had been explained and stated that the Government is under obligation to engage most competent lawyers for conducting the affairs. The Government is appointing the Advocates belonging to SCs/STs/BCs and women as Law Officers wherever suitable Advocates are available. It was specifically stated that the calculations made by the writ petitioner in the affidavit to show about percentages of reservation is baseless inasmuch as he confined his calculations only to the Government Pleaders appointed in the High Court of A.P., A.P. Administrative Tribunal, Land Grabbing Court and Central Administrative Tribunal. The definition of Law Officer being much wider than Government Pleader, the percentage has to be computed by taking into account the appointments made to the posts of Government Pleaders, Assistant Government Pleaders, Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors and Special Counsel. There is adequate representation of all communities in the Law Officer post. It was further stated that the ground raised by the writ petitioner that Instruction 7(d) is violated and the zonal wise ratio had not been maintained while appointing the Government Pleaders is absolutely misconceived. A reading of Instruction 7(d) shows that for the purpose of appointment of Law officers in High Court of A.P., A.P. Administrative Tribunal and other Courts and Tribunals at the State level they may be treated as one unit of appointment. Each zone has to be treated as one unit of appointment. The meaning of Instruction 7(d) is that in so far as appointment of Government Pleaders in High Court of A.P., A.P. Administrative Tribunal etc., and other State level courts is concerned, they had to be treated as one unit and those within mofussils each zone as defined in Presidential Order has to be treated as one unit for the purpose of appointment as Law Officers, meaning thereby for the purpose of computing the percentage of reservations etc., the whole State Level Courts have to be treated as one unit and in so far as mofussil courts are concerned, zone as defined in Presidential Order has to be taken as one unit. The petitioner is under wrong impression that there has to be proportionate zonal representation for appointment of Government Pleaders in the High Court of A.P., A.P. Administrative Tribunal etc.

The reference made to the Presidential Order in G.O.Ms.No.187 was only to identify a unit for the purpose of appointment of Law Officers and that zone as defined in Presidential Order may be taken into account for the purpose of treating it as a unit. Nothing more can be added to that and the petitioner's contention that Presidential Order is violated is baseless and untenable. In this view of the matter, the very ground raised by the petitioner is misconceived and misdirected and all the calculations and tables made in this behalf either in the matter of computing zonal reservations or reservations on community basis are baseless and devoid of merits. It was stated with regard to the allegation of violation of Article 335 of the Constitution of India made in the affidavit that the concept of Article 335 of the Constitution of India will come into picture while dealing with the civil posts and as already explained it is stated that it is settled law that the post of Law Officer not being a civil post does not come within the State services and there is no violation of Article 335 of the Constitution of India. It is further stated that it is factually incorrect to state that there is no sufficient/adequate representation of weaker sections in the posts of Law Officers.

11. In view of the importance of the question raised in the present Writ Petition and in the light of the decision of the learned Single Judge of this Court in W.P.No.9652/83 - **A.P. Backward Classes, Scheduled Castes and Scheduled Tribes Advocates Association Vs. Chief Secretary** and that of the Division Bench referred (8) supra, the Division Bench thought it fit to refer the matter to be decided by a Full Bench. The factual controversy between the parties would be well reflected from the respective pleadings of the parties. The allegations made in the affidavit filed in support of the Writ Petition were denied in the counter affidavit in substance and no doubt certain admissions also had been pointed out in relation to the eligibility and non-eligibility of certain of the Government Pleaders. It is needless to say that all these questions relate to the factual controversies between the parties.

12. Rules, 4, 7, 12, 13 and 14 of the Rules under G.O.Ms.No.187 may be relevant for the present purpose which read as hereunder :

Rule 4 :

(1) The Government, in consultation with the Advocate-General shall appoint such number of Law Officers in the High Court of Andhra Pradesh, Andhra Pradesh Administrative Tribunal, Central Administrative Tribunal, Hyderabad Bench, Special Court established under the Andhra Pradesh Land Grabbing (Prohibition) Act 1982, Andhra Pradesh State Consumer Disputes Redressal Commission and Sales Tax Appellate Tribunal or any other State Level Court or Tribunal as they may consider necessary.

(2) The Advocate-General shall prepare a panel of three advocates in advance before expiry of the term of the incumbents and send the same to the Government for consideration.

Provided that the Advocate-General may consider the suggestions of the concerned Department of the Government and the Heads of the Departments as the case may be, in inclusion of persons in the panel;

(3) No person shall be included in the panel for appointment as Government Pleader or Special Counsel unless he,

- a. has atleast ten years Standing as an Advocate of a High Court or two or more such High Courts in succession;
- b. is below sixty five years of age on the date of inclusion in the panel, and
- c. is an income-tax assessee for a period of at least three years prior to his appointment; or
- d. has practiced at the Bar for a period of five years in the case of appointment of members of the Andhra Pradesh State Higher Judicial Service or the Andhra Pradesh Secretariat Service.

(4) Appointment shall be made by the Government, -

- a. from among the members of the bar, or
- b. by transfer from among,-
 - i. the members of the Andhra Pradesh State Higher Judicial

Service from out of a panel of names forwarded by the High Court at the request of the Advocate-General; or

- ii. the members of the Andhra Pradesh Secretariat Service not below the rank of Deputy Secretary to Government in Law Department.

(5) No person shall be eligible for appointment as Assistant Government Pleader unless he is an Advocate of High Court of Andhra Pradesh, at least for a period of five years;

(6) On receipt of a panel sent by the Advocate-General under sub-instruction (2) the Government in Law Department shall consider the same and appoint one among the panel as Law Officer for a term prescribed under instruction 8 or call for a fresh panel.

(7) The Advocate-General shall submit a fresh panel as called for..... Sub-instruction (6) in the same manner as above for consideration.”

Rule 7:

Guidelines for selection Law Officers : The selection of candidates for appointment as Law Officers shall, as far as possible, be in accordance with the following guidelines:

- a. The selection shall be based primarily on merit and suitability;
- b. In making the selection, every endeavour shall be made to provide equitable representation to members of Scheduled Castes, Scheduled Tribes and Backward Classes in accordance with the ratio of 15%, 6% and 25% respectively. Women shall be accorded reasonable representation to all categories.
- c. When merit and suitability are equal, preference may be given to members of Scheduled Castes, Scheduled Tribes, Backward Classes and Women.
- d. For the above purpose, the High Court of Andhra Pradesh, the Andhra Pradesh Administrative Tribunal and other Courts and Tribunals at the State Level may be treated as one unit of appointment and each Zone may be treated as one unit of appointment.

Explanation : ‘Zone’ for the purposes of this Instruction means a ‘Zone’ specified in the Second Schedule to the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of District Recruitment) Order, 1975.

Rule 12 :

Bar to hold office : No Law Officer shall hold an office either by election or nomination in any local authority or its committee or such other office specified by the Government from time to time.

Rule 13 :

Relinquishment of certain assignment :- A Government Pleader or Assistant Government Pleader, Public Prosecutor or Additional Public Prosecutor before assuming charge as such shall relinquish his assignment, if any, such as Standing Counsel for any Statutory Corporation, Local authority or University or any other institution as well as notary.

Rule 14 :

Restriction on Private Practice : No Law Officer shall appear in any Court or Tribunal against the State of Andhra Pradesh, Local Authorities, State Public Undertakings, Universities and other institutions owned or controlled by the Government.

Though not initially at the first instance, at a later point of time after this Court called the information relating to the Income Tax Assessment particulars, respondents 2 to 30 herein had furnished particulars to this Court enclosing the xerox copies specifying the details of the number of years of the Income Tax Assessments of the said respondents. The particulars in nutshell as furnished by respondents 2 to 30 are as hereunder :

Respo- ndent No.	Name of the Government Pleader	PAN No.	Assessees of Income Tax for a period of
2	Mrs.Neeraja Sudhakar Reddy	AAQPB91138E	12 years
3	R.Satyanarayana Raju	ACHPR8779A	15 years
4	Addepalli Suryanarayana	ABGPA629F	15 years

5	D.Panduranga Reddy	APKPD6107C	5 years
6	Gande Anandam	AARPG8372Q	5 years
7	Katikaneni Ramesh	AJLPK5587C	4 years
8	M.Vishnuvardhan Reddy	AFGPM5033G	5 years
9	K.K.Mahinder Reddy	AJSPR2522J	7 years
10	P.Lakshma Reddy	AFTPP4852P	7 years
11	N.Ashok Kumar	ASPN8232K	10 years
12	K.Muralidhar Reddy	AIUPK3849H	8 years
13	Ms.S.Rekha Prasad	ARXPS3967Q	3 years
14	D.S.N.V.Prasad Babu	Not allotted	5 years
15	Fazal Yousuffuddin	AAJPY1959K	10 years
16	Sripada Prabhakar	AIYPS9733J	5 years
17	P.Vinod Kumar	AHGPP9209H	4 years
18	E.Seshagiri Rao	AABPE0903B	8 years
19	Ms.Kambhampati Malleswari	ABCOPK5917D	9 years
20	Sri K.Janakiram	AIEPK 4026 A	6 years
21	Sri Korrapati Subba Rao	ADO PK 6207 E	11 years
22	Sri A.Giridhar Rao	AAJPR 2803 E	7 years
23	Sri S.Ganghadara Reddy	AXUPS6219 C	3 years
24	Sri Godi Babji	AHWPG 6762 G	3 years
25	Ms.B.V.Seshaveni	ADHPB 1236 H	12 years
26	Sri Ch.Srinivas	ABF PC 7336 R	9 years
27	Sri G.Seenakumar	AEK PG 0969 A	5 years
28	Sri A.Abhishek Reddy	AAMPA 4570 H	13 years
29	Sri J.Satya Prasad	AFNPJ 8039 C	3 years
30	Sri D.Y. Shetty	AERPD 3317 C	6 years

13. In the decision referred (14) supra, the following directions were issued :

- i. the Government of Andhra Pradesh shall, in pursuance of the decision already taken by it, make forthwith a provision providing for reservation in favour of Scheduled Castes, Scheduled Tribes and Backward

Classes, in the matter of appointment of Law Officers in the State. It is for the Government to decide, whether to make such provision by an administrative order – which also is held sufficient for this purpose by the Full Bench of Punjab and Haryana High Court in *Kanwal Parkash v. State of Punjab* (1976(2) Ser.L.R. 801 – or by making a rule under the proviso to Article 309 of the Constitution of India. The provision shall make, as already decided by the Government, substantially in the same terms as R.22, Andhra Pradesh State and Subordinate Service Rules

- ii. pending the making of such provision, the Government shall not make any appointment to the category of Law Officers under the A.P. Law Officers (Recruitment, Conditions of Service and Remuneration) Rules, 1967, in the State of Andhra Pradesh.

The Division Bench of this court while dealing with the appointment of Law Officers and Advocates belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes in the context of A.P. Law Officers (Recruitment, Conditions of Service and Remuneration) Rules 1967 and the repeal thereof by G.O.Ms.No.55 and replacement by G.O.Ms.No.57 had arrived at a conclusion that the Court cannot quash the repeal of 1967 Rules nor can quash the executive instructions on the ground that they do not contain the rule of reservation as was introduced in 1967 Rules. Justice K.M. Agarwal, as he then was, and Justice P.Venkata Rami Reddy, as he then was, delivered concurring Judgments expressing the same view and ultimately negated the relief prayed for in the Writ Petitions. On the next day of delivering of the Judgment in the case referred (16) supra (W.P.No.9652/83 on 24-1-1984) the Government issued G.O.Ms.No.14, dated 25-1-1984 by virtue of which special representation was introduced in 1967 Rules, hereinafter referred to as 'old rules'. Subsequent thereto certain amendments were carried

out which held the field for about six years and subsequent thereto the Government decided to repeal the old rules by replacing them by executive instructions without a provision relating to reservation of the posts of Law Officers for Backward Classes, Scheduled Castes and Scheduled Tribes. The Government on 29-1-1994 issued G.O.Ms.No.15 introducing certain amendments to G.O.Ms.No.57, dated 16-3-1990 and paragraphs 2(c) and 3(b) were inserted. G.O.Ms.No.18 dated 3-2-1994 was issued making a provision for selection of Scheduled Caste, Scheduled Tribe and Backward Class candidates for undergoing training under the Law Officers on payment of monthly stipend. By G.O.Ms.No.30 dated 1-3-1994, G.O.Ms.No.57 was further amended. Several details relating to G.O.Ms.Nos.14, 15, 55, 56, 57, 24 and 118 in the interregnum period need not be discussed at length except for the purpose of tracing out the historical background of the litigation. W.P.No.2003/2000 was disposed of by a learned Judge of this Court to follow the rule of reservation as provided in G.O.Ms.No.118, dated 28-6-1999. Strong reliance was placed on **Kranth Sangram Parishath Vs. Sri N.Janardhan Reddy** wherein a Full Bench of this Court held :

“The Directive Principle in Article 46 obligates the State to protect the educational and economic interests of the weaker Sections. The Special Officer for Scheduled Castes and Scheduled Tribes appointed by the President under Article 338 of the Constitution is charged with the duty of investigating all matters relating to the safeguards provided for these sections. Although persons belonging to weaker sections have no constitutionally enforceable right to approach this Court for a direction to the State to effect reservations, when once such reservations were provided by the State they could not be terminated in the absence of any valid reasons like cessation of the need for reservations on the ground that considerable social and educational advancement has been achieved and the disparities between them and the advanced sections have disappeared. No such plea was raised by the State before us. On the other hand the plea of the State is that with a view to providing more reservations Section 3-A was brought into being. Inasmuch as Section 3-A in its actual application wipes out to a great extent the existing reservations in favour of Scheduled Castes and Scheduled Tribes and Backward Classes without any valid reasons, we are of the view that the impugned provision is arbitrary on this score”.

The learned Judge K.M.Agarwal, J in the decision referred (8 supra) at para-12 and 13 observed :

“It has to be remembered that in the said Kranth Sangram Parishath (1992(3) ALT 99 (FB) the Full Bench was considering the Constitutional validity of certain provisions of a State Act and of the rules thereunder framed. It did not have before it any question of directing the State for making adequate provisions for reservation in any statutory Act, or Rules, or instructions of the Government. On the contrary, it was specifically noted that the persons belonging to weaker sections have no constitutionally enforceable right to approach the Court for a direction to the State to effect reservations. The further observation that “when once such reservations were provided by the State they could not be terminated in the absence of any valid reasons” was considered as one of the circumstances for invalidating the provisions of Section 3-A of the Act under consideration. In this context, we have to see if there was valid reason for dispensing with the rule of reservation in matters of appointment of Law Officers. As pointed out in the counter affidavit filed in W.P.No.5464/1993, the Government found various practical difficulties in continuing the rule of reservation in the matter of appointment of Law Officers and also realized that there was no fundamental right to rule of reservation, in so far as the Law Officers were concerned, it decided to dispense with the rule of reservation. To quote the words of the counter affidavit filed by the Deputy Law Secretary :-

“3. In reply to paras 3 to 9 of the affidavit I submit that all the allegations made herein are denied. There is no truth in the allegations that the instructions in G.O.Ms.No.57, Law, dated 16-3-1990 were issued only to subserve the interests of particular caste people. The appointment of Law Officers are made after taking into account the educational qualifications, standing at the Bar, the nature of practice, the volume of work, age, antecedents and the quality of advocacy of the concerned advocates and after considering the relative merits of the advocates in the advocates in the panels forwarded by the District Collector in consultation with the concerned District Judge in the case of Courts subordinate to the High Court and after considering the relative merits of the advocates in the panels forwarded by the Advocate-General in the case of the High Court of Andhra Pradesh, Andhra Pradesh Administrative Tribunal, Land Grabbing Tribunal, Corporations, Public

Undertakings and Local Authorities etc., whenever suitable and eligible advocates belonging to S.C., S.T. and B.Cs. are recommended by the concerned authorities, the Government have been appointing the advocates of the said categories as Law Officers though there are no instructions to implement the rule of reservation. An Advocate should not be appointed as Law Officer simply because he belongs to B.C., S.T., or S.T. The competence of the Advocate to serve as Law Officer should be considered. Persons known for their competence alone can be considered for appointment for posts in professional fields. It is submitted that the posts of Law Officers are to serve as Law Officer should be considered. Persons known for their competence alone can be considered for appointment for posts in professional fields. It is submitted that the posts of Law Officers are not regular civil posts inasmuch as they are only tenure posts for a specific period. They are also not transferable posts. The post of Law Officer is confined to a particular place and the appointment is on the basis of the recommendations made either by the District Collector in consultation with the concerned District Judge or by the Advocate General of Andhra Pradesh as std above. Since the rules framed under the Advocates Act prohibit the advocates from applying for any Law Officer post, it is difficult for the recommending authority to know the social status of the Advocates and consequently implementing the rule of reservation also becomes impracticable. In case a suitable advocate of the community for which a Law Officer post is reserved at particular place is not available, it is difficult to implement the rule of reservation. The exercise on the part of the appointing authority to know the social status of the advocates for the purpose amounts to asking the advocates to put in an application for appointment of the Law Officers against the provisions of the Advocates Act. It may indirectly amount to forcing the appointing authority to do what is prohibited by law. It is further submitted that there is no fundamental right to rule of reservation so far as Law Officers are concerned. Further it is submitted that it is difficult to follow the rotation system envisaged by the rule of reservation which is applicable to the regular civil posts inasmuch as the posts of Law officers are tenure posts being non-transferable, the implementation of rule becomes difficult in case there are no suitable advocates of the reserved categories to fill up the panel. The allegation that the instructions in G.O.Ms.No.57, Law, dated 16-3-1990 were issued to harm prejudice the interests of weaker sections is totally denied. It is submitted that no person has any legal right to the appointment to office

of a Law Officer under the Law. It is the prerogative of the state of Andhra Pradesh to appoint eligible, qualified and suitable advocates as Law Officers to safeguard and defend the interests of the State on the concerned Courts of any District or the High Court. No rights are conferred on any individual either by the Constitution or any other law, to claim appointment to the post of Law Officer as a matter of right on the grounds of principles of reservation. It is also submitted that the impugned G.O.Ms.No.57 was issued on 16-3-1990 the writ petitions have allowed 3½ years to lapse without lifting a finger and have only now invoked the jurisdiction of this Hon'ble Court. This inordinate delay constitutes laches and is in itself a sufficient ground to dismiss the Writ Petition."

In *Indra Sawhney vs. Union of India* (AIR 1993 S.C. 477), the majority view of the Supreme Court was :

"While on Art.335, we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organizations/departments/institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g. Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable."

We find that the post of a Law Officer is also one of such posts as considered by the Supreme Court in the said case to be inappropriate for making a provision for reservation. In the light of these facts, the provision now made in the impugned Executive Instructions for giving preferential treatment to persons belonging to B.C., S.C. or S.T. class cannot be said by the inadequate for satisfying the requirement of Art. 16(4) of the Constitution, if any.

The fathers of the Indian Constitution were well nigh aware of

the dangers of giving all pervading powers to any of the three wings of the Constitution; Executive, Legislature and Judiciary, and, therefore, they were meticulous in defining the limits of their respective powers, so as to avoid any Legislature to legislate on any possible trespass over the field of others. Accordingly we cannot direct the Legislature to legislate on any matter, howsoever important it may be, or the Executive to take any particular type of policy decision on any subject whatsoever, though we have powers to strike down any legislation, or executive action on the ground of violation of any of the fundamental rights guaranteed by the Constitution.”

In the said decision (8 supra) the learned Judge P.Venkatarama Reddi, J while respectfully concurring with the conclusions reached by K.M. Agarwal J, further observed at paras 17, 18 and 19 as hereunder :

“Referring to the decision in A.P. B.Cs., S.Cs. & S.Ts. Advocates Association Vs. Chief Secretary to Govt. (1 supra), Agarwal J, has pointed out that this Court ought not to have granted a direction to make a provision for reservation. My learned brother has taken this view obviously for the reason that Article 16(4) is an enabling provision and the Court cannot direct the State to legislate or to make rules in relation to a policy matter. The learned Judge who decided the aforementioned case was quite conscious of the limitations in this behalf, as is evident from the following remarks at paragraph 31 :

“All that repeatedly stated is that, the issuance of an amendment to the statutory Rules, in terms of the said decision, is still under consideration. This is not a case where the Court is directing the enforcement of a directive principle; this is not even a case where the Court is forcing a policy decision upon the Government. It is also not a case where the factual situation calling for the application of the rule of reservation in doubt.”

But the direction given in the judgment could, in my view, be justified don the peculiar facts of that case the foremost amongst which was that the State Cabinet had already taken a decision on 11-6-1983 to provide for reservations in Law Officers posts. The rationale and justification for such direction – extraordinary as it was, is discernible from the following

words of Jeevan Reddy, J at paragraph 34 :

“But, as I have been at pains to emphasize, it is not the intention of this Court to dictate any policy to the State, since that policy has already been made, as also the terms in which the said policy is to be implemented. Inasmuch as no reasons are stated as to why the said policy was not being implemented by amending the relevant Rules, I found it fit to give this direction, consistent with the Constitutional mandate in Article 16 and the goal stated in Article 46. It is true that, in theory, it may be open to the Government to go back upon the said policy decision, but, since the factual situation is there and since a decision has already been arrived at, I do not think it would be permissible in the circumstances of this case, for the Government to go back upon that decision.”

I do not understand that judgment as placing an embargo on the State's power to reconsider and reverse the policy decision for good reasons. It cannot be said that the judgment rendered by Jeevan Reddy, J mandates the reservation policy to continue “for all time to come” – to borrow the expression of Agarwal, J if, in the light of experience subsequently gained or on further deliberations, the Government considers that the implementation of the rule of reservation is fraught with practical difficulties and that a rule of preference instead of a rule of reservation is more appropriate, I do not think that anything said in that judgment would place a fetter on the Government against the repeal of the previous rules. Moreover, as rightly contended by the learned Advocate General that that decision was rendered at a time when the recruitment and conditions of service of Law Officers were governed by the rules framed under Article 309 which, by necessary implication, means that the State Government virtually wanted to treat the Law Officers as its employees. But that concept has undergone a change with the decision taken by the Government to exclude them from the purview of Article 309 and to frame executive instructions to govern their recruitment and terms of engagement. This step has been considered to be more appropriate by the Government, as the file placed before us shows. Such a treatment of the Law Officers who hold office for a tenure and work on part-time basis has been sanctified, though post-facto, by the precedential authority, emanating from the Apex Court in a recent judgment in *State of U.P. Vs. U.P. State Law Officers*

Association (AIR 1994 S.C. 1654). Whether the replacement of 1967 Rules by executive instructions is bona fide or it amounts to fraud on power, is a matter already dealt with by Agarwal J, and I do not wish to elaborate further.

I would like to say a few words about para-2C and para 3B introduced by G.O.Ms.No.15 dated 29-1-1994. The said paras enjoin that in the appointment of Law Officers, preference shall be given to Advocates belonging to SC/ST/BC categories, if all things remain equal, when compared to other candidates in the panel. Para 2-C applies to Law Officers in the High Court and the A.P. Administrative Tribunal, and Para-3B governs the appointments in the District and Subordinate Courts. Though I do not regard this provision as an effective substitute for the rule of reservation, I think it would go a long way in achieving the Constitutional goal enshrined in Article 46 and in fulfilling the mandate of Articles 16(1) and 335 of the Constitution. The Government's policy to give adequate representation to the lawyers of socially and educationally Backward Classes is clearly reflected in these provisions. Having found that it would be impracticable and inappropriate to earmark certain percentage of posts, the Government struck a via-media which, if properly implemented, is capable of achieving the Constitutional goal even in this sphere. Apprehensions were expressed by the learned Counsel that this provision gives a large play for discretion and provides a leverage to circumvent the desired objective. I do not think so. Whether it be a reservation or preference, the possibility of misuse or improper exercise of power cannot be ruled out. But merely on account of this possibility, the rule of preference cannot be regarded worthless. For instance, even if the rule of reservation is there, the criterion of suitability to handle the job cannot be dispensed with, especially when the Law Officers' posts are not such as are to be filled up by a competitive examination and that necessarily imports an element of subjective assessment.

It is relevant to notice that the panel of Law Officers has to be prepared by the District Collector in consultation with the District Judge in the case of District and Subordinate courts and in the case of High Court and the A.P. Administrative Tribunal, this task is entrusted to a Constitutional functionary viz., Advocate General. I have no reason to think that these consultative agencies will not act in keeping with the avowed policy of the Government to give adequate representation to the S.C./S.T./B.C. lawyers. In my view, it is implicit in the very rule of preference that before preparing a panel, there should be active application mind on the part of the consultative

agencies and the Government with a view to find qualified and suitable advocates belonging to S.C./S.T. and Backward Classes. It must be ensured that suitable and sincere lawyers belonging to these classes are not left out of consideration in the process of selection of Law Officers. This type of approach together with the training programmes launched by the State Government will, I hope, result in the appointment of adequate number of them in due course.”

14. In the background of the Constitutional philosophy relating to providing reservations to Scheduled Castes, Scheduled Tribes etc., in relation to public employment and also in relation to public offices and in the light of the view expressed by the Full Bench referred **(17)** supra and also the views expressed by the learned Judges in the concurring Judgments in the Division Bench referred **(8)** supra, the present Writ Petition had been referred to this Full Bench.

15. In the decision referred **(13)** supra the Apex Court while dealing with the office of the Public Prosecutor held that the Public Prosecutor/District Government Counsel and the right of existing incumbent to renewal or extension of his tenure held that the appointment of Public Prosecutor or District Government Counsel is in the nature of a professional engagement governed by the provisions of Cr.P.C. and the relevant executive instructions and does not amount to appointment to a Civil Post and does not attract the proviso to Article 309 of the Constitution of India and making of such appointment is by following the procedure contained in the Cr.P.C. and adopting a reasonable or fair procedure and hence the same is normally not subject to judicial review and the question of State's satisfaction or otherwise with the performance of its Counsel is a matter between the State and the Counsel and an incumbent has no legally enforceable right of renewal or extension of his tenure. The Constitution Bench in **State of Assam Vs. Kanak Chandra** while dealing with Articles 310 and 311 of the Constitution of India and the meaning of 'civil post' held that post is employment but every employment is not post and casual labourer is not holder of a post and post exists apart from the holder of the post and it was further held that Mauzdar in Assam valley holds a civil post under the State

and is entitled to the protection under Article 311(2) of the Constitution of India and the fact that he was not a whole time employee nor drew a salary but commission did not alter the status of his post as post outside regularly constituted service need not necessarily carry definite rate of pay nor such post must necessarily be a whole time employment. Strong reliance was placed on **Kumari Shrilekha Vidyarthi Vs. State of U.P. and others** wherein the two Judge Bench of the Apex Court while dealing with the public element attached to the District Government Counsel and removal en bloc of all District Government Counsel in State by State Government in the context of arbitrariness and judicial review in the light of Article 14 of the Constitution of India observed :

“Even apart from the premise that the ‘office’ or ‘post’ of D.G.Cs. has a public element which alone is sufficient to attract the power of judicial review for testing validity of the impugned circular on the anvil of Article 14, we are also clearly of the view that this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more ? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.

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Even assuming that it is necessary to import the concept of

presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

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It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is *sine qua non* to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.”

In **State of U.P. Vs. U.P. State Law Officers Association** at para-6 it was observed :

“The appointment of lawyers by the Government and the public bodies to conduct work on their behalf, and their subsequent removal from such appointment have to be examined from three different angles viz., the nature of the legal profession, the interests of the public and the modes of the appointment and removal.

Legal profession is essentially a service oriented profession. The ancestor of today’s lawyer was no more than a spokesman who rendered his services the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the government and the public bodies started engaging them to conduct cases on their behalf. The

government, and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the government and the public bodies are described as their law officers. It is precisely for this reason that in the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules, waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from the lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the Court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an advisor to his client and is rightly called a counsel in some jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the Court and an important adjunct of the administration of justice, the lawyer also owes a duty to the Court as well as to the opposite side. He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies.

Over the years, the public sector has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably, so much so, that it can truly be said that today there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal profession has thus undergone a change.

The Government or the public body represents public interests, and whoever is in charge of running their affairs is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner is his primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes on them the duty to engage the most competent servants, agents, advisors, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other method such as inviting and appointing the best available, although he may not have applied for the post. Whatever the method adopted, it must be shown that the search for the meritorious was undertaken and the appointments were made only on the basis of the merit and not for any other consideration.

It would be evident from Chapter V of the said Manual that to appoint the Chief Standing Counsel, the Standing Counsel and the Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate General much less the Chief Justice or any Judges of the High Court or to take into consideration, the views of any committee that “may” be constituted for the purpose. The State Government has a discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than

merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the backdoor have to go by the same door. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them.

As the facts narrated earlier show, out of 26 respondent-law officers, the period of contract of nine of them had expired and they were continued till further orders. The remaining seventeen had continued after the expiry of their initial term without any formal orders of extension. In other words, none of the 26 officers had any right to hold the office on the date of their removal, even under the initial terms of appointment which stipulated the contractual period. This is apart from the fact that the terms of the contracts also provided that the appointment could be terminated at any time without assigning reason. The reliance placed by the respondents in this behalf on *Kumari Shrilekha Vidyarthi Vs. State of U.P.* (1991) 1 SCC 212 : (AIR 1991 S.C. 537) is misplaced for the obvious reason that the decision relates to the appointment of the District Government Counsel and the Additional/Assistant District Government Counsel who are the law officers appointed by the State Government to conduct civil, criminal and revenue cases in any court other than the High Court. Their appointments are made through open competition from among those who are eligible for appointment and strictly on the basis of merit as evidenced by the particulars of their practice, opinions of the District Magistrate and the District Judge and also after taking into consideration their character and conduct. Their appointment is in the first instance for one year. It is only after their satisfactory performance during that period that a deed of engagement is given to them, and even then the

engagement is to be for a term not exceeding three years. The renewal of their further term again depends upon the quality of work and conduct, capacity as a lawyer, professional conduct, public reputation in general, and character and integrity as certified by the District Magistrate and the District Judge. For the said purpose, the District Magistrate and the District Judge is required to maintain a character roll and a record of the work done by the officer and the capacity displayed by him in discharge of the work. His work is also subject to strict supervision. The shortcomings in the work are required to be brought to the notice of the Legal Remembrancer. It will thus be seen that the appointment of two sets of officers viz., the Government Counsel in High Court with whom we are concerned, and the District Government Counsel with whom the said decision was concerned are made by dissimilar Procedures. The latter are not appointed as a part of the spoils system. Having been selected on merit and for the no other consideration, they are entitled to continue in their office for the period of the contract of their engagement and the can be removed only for valid reasons. The people are interested in their continuance for the period of their contracts and in their non-substitution by those who may come in through the spoils system. It is in these circumstances that this Court held that the wholesale termination of their services was arbitrary and violative of Article 14 of the Constitution. The ratio of the said decision can hardly be applied to the appointments of the law officers in the High Court whose appointment itself was arbitrary and was made in disregard of Article 14 of the Constitution as pointed out above. What is further, since the appointment of District Government Counsel is made strictly on the basis of comparative merit and after screening at different levels, the termination of their services is not consistent with the public interests. We are, therefore, of the view that the High Court committed a patent error of law in setting aside the order dated 23-7-1990 terminating the services of the respondent-law officers.”

In **Central Bank of India Vs. C.Bernard** it was observed at para-5 as hereunder :

“Taking the last submission first we think that in the facts and circumstances of this case the de facto doctrine can have no application. Under paragraph 19.14 of the bi-partite agreement the Chief Executive Officer was entitled to decide which officer should be empowered to hold an enquiry and take disciplinary

action in the case of each office or establishment. Under this paragraph only an officer of the Bank could be empowered to hold an enquiry and take disciplinary action against a delinquent. The names of officers so empowered were required to be published on the Bank's notice board. Accordingly, Shri U.B. Menon was appointed an Enquiry Officer/Disciplinary Authority under paragraph 19.14 of the bi-partite agreement while he was still in service. It is indeed surprising that an officer who was due to retire within a few days only was chosen to act as an Enquiry Officer and Disciplinary Authority by the order dated January 9, 1979. Shri U.B. Menon was intimated about his appointment by the letter of January 23, 1979 i.e., hardly a week before his superannuation on January 31, 1979. After his retirement from service he proceeded with the enquiry and concluded it by the end of 1979. The respondent was then served with a second show cause notice on the question of punishment and thereafter the impugned order of discharge was passed on January 14, 1980. There is nothing on the record to show that any formal decision was taken by the appellant to continue the services of Shri U.B. Menon as an official of the Bank. Shri Shetya is right when he contends that an Enquiry Officer need not be an officer of the Bank; even a third party can be appointed an Enquiry Officer to enquire into the conduct of an employee. See : *Saran Motors (P) Ltd. Vs. Vishwanath* (1964(2) LLJ 139 : (1964) 9 FLR 77 (SC). But there can be no doubt that a non-official cannot act as a Disciplinary Authority and pass an order of punishment against the delinquent employee. It is for this reason that the learned Single Judge of the High Court observed that on retirement Shri U.B. Menon was nobody in the hierarchy of authorities to impose punishment on the delinquent employee. It is for this reason that the learned Single Judge of the High Court observed that on retirement Shri U.B. Menon was nobody in the hierarchy of authorities to impose punishment on the delinquent. He, therefore, held that the order of punishment was clearly incompetent and without jurisdiction. The learned Counsel for the appellant submitted that since the initial appointment of Shri U.B. Menon was valid, his actions and decisions could not be invalidated by his subsequent retirement. According to him he continued to function as an Enquiry Officer de facto and hence his actions and decisions were saved. The de facto doctrine has two requisites, namely (i) the possession of the office and the performance of the duties attached thereto, and (ii) colour of title, that is, apparent right to the office and acquiescence in the possession thereof by the public.

According to this doctrine the acts of officers de facto performed within the sphere of their assumed official authority, in the interest of the public or third parties and not for their own interest, are generally held valid and binding as if they were performed by de jure officers. This doctrine dates back to the case of Abbe de Fountaine decided way back in 1431 to which reference was made by Sir Asutosh Mookerjee, J in *Pulin Behari Das V. Kind Emperor* (1911-12) 16 Cal.W.N. 1105, 1120 :15 CLJ 517). Mookerjee, J. held that as the complaint was made after complying with Section 196, Criminal Procedure Code, by the order of or under authority from local government which was de facto, the proceedings were valid. On the same principle it was further held that the Court of Sessions, assuming it was the colour of title which indicated the acquiescence of the public in its actions and hence its authority could not be collaterally impeached in the proceedings arising from the conviction of Pulin and his co-accused. Again, in *Immediseti Ramkrishnaiah Sons Vs. State of Andhra Pradesh* (AIR 1976A.P. 193) the government nominated nine persons on a Market Committee which nomination was later set aside by the High Court. However, before the High Court pronounced its judgment, the Market Committee had functioned as if it had been properly constituted. Between the date of its constitution and the date of the High Court decision it had taken several decisions, issued notifications etc., which were the subject matter of challenge on the ground that its constitution was *ab initio* bad in law. Chinnappa Reddy, J. relying on the observations of Mookerjee, J. in *Pulin* case concluded that the acts of the Market Committee de facto performed within the scope of its assumed official authority, in the interest of the public or third persons and not for his own benefit are generally as valid and binding as if they were performed by a de jure Committee. The Allahabad High Court in *Jai Kumar vs. State* (1968 All.L.J. 877) upheld the judgments of the District Judges whose appointments were later struck down by this Court because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by someone claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or benefit by reason of being the officer which he claims to be. In all other cases, the acts of an officer de facto are valid and effectual, while he is suffered to retain the office, as though he were an officer by right and the same legal consequences will flow from them for the protection of the public and of the third parties. This Court in *Gokaraju Rangaraju Vs. State of A.P.* (1981) 3

SCC 132) was required to consider the question of the effect of the declaration of this Court holding the appointment of an Additional Sessions Judge invalid on judgments pronounced by him prior to such declaration. This Court observed that the de facto doctrine is founded on good sense, sound policy and practical experience. It is aimed at the prevention of public and private mischief and the prevention of public and private interest. It avoids endless confusion and needless chaos. It, therefore, seems clear to us that the de facto doctrine can be invoked in cases where there is an appointment to office which is defective; but notwithstanding the defect to the title of the office, the decisions made by such a de facto officer clothed with the powers and functions of the office would be as efficacious as those made by a de jure officer. The same would, however, not be true of a total intruder or usurper of office.”

Reliance also was placed on **State of U.P. Vs. Bhola Nath Srivastava, Jauhar and others** , **Rayabarapu Somayya Vs. The Election Officer and others** and **Chalapathi Vs. State of A.P.** . On the aspect of employment or appointment and also the concept of “post” and “tenure petitioner” post, reliance was placed on **B.Prabhakar Rao Vs. State of A.P., Union of India Vs. R.G. Kashikar** , **Shivacharan Vs. State of Mysore** , **Champaklal Vs. Union of India** , **Dr.L.P.Agarwal Vs. Union of India and others**. Reliance also was placed on **Mahabir Auto Stores Vs. Indian Oil Corporation** wherein it was held at para-12 :

“It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in pro under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in **M/s.Radha Krishna Agarwal Vs. State of Bihar** (1977) 3 SCC 457. It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties.

Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of the State organ under Article 14 can be checked. See *M/s. Radha Krishna Agarwal Vs. State of Bihar* at p.462 (at SCC) (at p.1499-1500 of AIR) but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to *E.P. Royappa V. State of Tamil Nadu* (1974) 4 SCC 3 : (AIR 1974 S.C. 555); *Menaka Gandhi Vs. Union of India* (1978(1) SCC 248) : (AIR 1978 S.C. 597), *Ajay Hasia V. Khalid Mujib Sehravardi* (1981) 1 SCC 722 : (AIR 1981 S.C. 487); *R.D. Shetty V. International Airport Authority of India* (1979) 3 SCC 489 : (AIR 1979 S.C. 162) and also *Dwarakadas Marfatia and Sons V. Board of Trustees of the Port of Bombay* (1989) 3 SCC 293 : (AIR 1989 S.C. 1642). It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone

of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

In **LIC of India Vs. Consumer Education & Research Centre** it was observed :

“Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element (sic that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simpliciter do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. The Administrative Law by Wade, 5th Edn., at p.513 in Chapter 16, Part IV dealing with remedies and liabilities stated thus :

“Until a short time ago anomalies used to be caused by the fact that the remedies employed in administrative law belong to two different families. There is the family or ordinary private law remedies such as damages, injunction and declaration; and there is a special family of public law remedies particularly certiorari, prohibition and mandamus, collectively known as the prerogative remedies. Within each family the various remedies can be sought separately or together or in the alternative. But each family had its own distinct procedure”.

At p.514 it was elaborated that, “this difficulty was removed in 1977 by the provision of a comprehensive, ‘application for judicial review’, under which remedies in both families became interchangeable”. At p.573 with the heading “Application for Judicial Review” in Chapter 17, it is stated thus :

“All the remedies mentioned are then made interchangeable by being made available ‘as an alternative or in addition’ to any of them. In addition, the Court may award damages if they are claimed at the

outset and if they could have been awarded in an ordinary action”.

The distinction between private law and public law remedy is now settled by this Court in LIC Vs. Escorts Ltd., by a Constitution Bench thus : (SCC p.344, para 102)

“If the action of the State is related to contractual obligations or obligations arising out of the tort, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances.”

In **S.Laxma Reddy Vs. State of A.P.** it was observed : .

“From the above discussion and the ratio that emerges from the decision decisions of the Apex Court, firstly I hold that the post of Law Officer in the Government of Andhra Pradesh is a public post and, therefore, rule of reservation is applicable. Further, it is amenable to judicial scrutiny and attracts Article 14 of the Constitution. Secondly, I hold that as per Section 24 of the Code read with Instruction 5(4) of the Instructions, before making recommendations by the District Magistrate in the course of preparation of panel for appointment of Public Prosecutor, the Sessions Judge and the District Magistrate are required to consult and discuss the names of the persons fit to be included in the panel, that the expression ‘panel’ means names of persons and not one person. Thus, I hold that the statutory mandate was not followed by the District Magistrate, Mehboobnagar, in its true spirit. As can be gathered from the records, there is no real and effective consultation and discussion by the District Magistrate and the Sessions Judge, while recommending the name of 3rd respondent. Thus the recommendation of the name of the 3rd respondent is contrary to Section 24 of the Code and Instruction 5(4) of the

Instructions. Thirdly, I hold that when once the panel is recommended to the Government for its consideration as obligated under the instruction 4 and 5 and if the Government is not satisfied with the panel, it should reject the panel and called for a fresh panel as contemplated under instructions. Therefore, the question of supplementing the name of 3rd respondent in the earlier panel wording it as continuation of the panel, is contrary to the Instructions and the provisions of the Code. Thus the recommendation of the District Magistrate in respect of the 3rd respondent for inclusion in the panel for appointment as Public Prosecutor cannot be treated to be in continuation of panel dated 15-5-2001. The phrase *continuation of panel* is not found either in Section 24 of the Code or in Instructions, 2000.”

In Guru Gobinda Basu Vs. Sankari Prasad Ghosal and others it was observed :

“We think that this contention is correct. We agree with the High Court that for holding an office or profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them. The Constitution itself makes a distinction between ‘the holder of an office of profit under the Government’ and ‘the holder of an office of profit under a local or other authority subject to the control of Government;’ see Arts. 58(2) and 66(4). In *Abdul Shakur v. Rikhab Chand*, 1958 SCR 387 : (AIR 1958 S.C. 52) the appellant was the manager of a school run by a committee of management formed under the provisions of the Durgah Khwaja Saheb Act, 1955. He was appointed by the administrator of the Durgah and was paid Rs.100/- per month. The question arose whether he was disqualified to be chosen as a member of Parliament in view of Art. 102(1)(a) of the Constitution. It was contended for the respondent in that case that under Sections 5 and 9 of the Durgah Khwaja Saheb Act, 1955 the Government of India had the power of appointment and removal of members of the committee of management as also the power to appoint the administrator in consultation with the committee; therefore the appellant was under the control and supervision of the Government and that therefore he was holding an office of profit under the Government of India. This contention was repelled and this Court pointed out the distinction between ‘the holder of an office of profit under the Government’ and ‘the

holder of an office of profit under some other authority subject to the control of Government'. Mr. Chaudhuri has contended before us that the decision is in his favour. He has argued that the appellant in the present case holds an office of profit under the Durgapur Projects Ltd. And the Hindustan Steel Ltd. Which are incorporated under the Indian companies Act; the fact that the Comptroller and Auditor General or even the Government of India exercises some control does not make the appellant any the less a holder of office under the two companies. We do not think that this line of argument is correct. It has to be noted that in *Maulana Abdul Shakur's case*, 1958 SCR 387 : (AIR 1958 S.C. 520) the appointment of the appellant of that case was not made by the Government nor was he liable to be dismissed by the Government. The appointment was made by the administrator of a committee and he was liable to be dismissed by the same body. In these circumstances this Court observed :

“No doubt the Committee of the Durgah Endowment is to be appointed by the Government of India but it is a body corporate with perpetual succession acting within the four corners of the Act. Merely because the Committee or the members of the Committee are removable by the Government of India or the Committee can make bye-laws prescribing the duties and powers of its employees cannot in our opinion convert the servants of the Committee into holders of office of profit under the Government of India. The appellant is neither appointed by the Government of India nor is removable by the Government of India nor is he paid out of the revenues of India. The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government though payment from a source other than Government revenue is not always a decisive factor. But the appointment of the appellant does not come within this test.”

It is clear from the aforesaid observations that in *Abdul Shakur's case* 1958 SCR 387 : (AIR 1958 S.C. 52) the facts which were held to be decisive were (a) the power of the Government to appoint a person to an office of profit or to

continue him in that office or revoke his appointment at their discretion, and (b) payment from out of Government revenues, though it was pointed out that payment from a source other than Government revenues was not always a decisive factor. In the case before us the appointment of the appellant as also his continuance in office rests solely with the Government of India in respect of the two companies. His remuneration is also fixed by Government. We assume for the purpose of this appeal that the two companies are statutory bodies distinct from Government but we must remember at the same time that they are Government companies within the meaning of the Indian Companies Act, 1956 and 100% of the shares are held by the Government. We must also remember that in the performance of his functions the appellant is controlled by the Comptroller and Auditor General who himself is undoubtedly holder of an office of profit under the Government, though there are safeguards in the Constitution as to his tenure of office and removability therefrom under Article 148 of the Constitution the Comptroller and Auditor General of India is appointed by the President and he can be removed from office in like manner and on the like ground as a Judge of the Supreme Court. The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the second Schedule to the Constitution. Under Cl. (4) of Article 148 the Comptroller and Auditor-General is not eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office. Clause (5) of the said Article lays down that subject to the provisions of the Constitution and of any law made by Parliament, the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General. Under Art. 149 of the Constitution the Comptroller and Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of the Constitution in relation to the accounts of the Dominion of India and the Provinces respectively. The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union have to be submitted to the President and the reports of the Comptroller and Auditor-General relating to the accounts of a State have to be submitted to the Governor. From the aforesaid provisions it appears to us that the Comptroller and

Auditor General is himself a holder of an office of profit under the Government of India, being appointed by the President and his administrative powers are such as may be prescribed by rules made by the President, subject to the provisions of the Constitution and of any law made by Parliament. Therefore if we look at the matter from the point of view of substance rather than of form it appears to us that the appellant as the holder of an office of profit in the two Government Companies, the Durgapur Projects Ltd. And the Hindustan Steel Ltd., is really under the Government of India; he is appointed by the Government of India, he is removable from office by the Government of India; he performs functions for two Government companies under the control of the Comptroller and Auditor-General who himself is appointed by the President and whose administrative powers may be controlled by rules made by the President.

.....

There again the decisive test was held to be the test of appointment. In view of these decisions we cannot accede to the submission of Mr. Chaudhuri that the several factors which enter into the determination of this question – the appointing authority, the authority vested with power to terminate the appointment, the authority which determines the remuneration, the source from which the remuneration is paid, and the authority vested with power to control the manner in which the duties of the office are discharged and to give directions in that behalf – must all co-exist and each must show subordination to Government and that it must necessarily follow that if one of the elements is absent, the test of a person holding an office under the Government, Central or State, is not satisfied. The cases we have referred to specifically point out that the circumstance that the source from which the remuneration is paid is not from public revenue is a neutral factor – not decisive of the question. As we have said earlier whether stress will be laid on one factor or the other will depend on the facts of each case. However, we have no hesitation in saying that where the several elements, the power to appoint, the power to dismiss, the power to control and give directions as to the manner in which the duties of the office are to be performed, and the power to determine the question of remuneration are all present in a given case, then the officer in question holds the office under the authority so empowered.”

In **Dasaratha Rama Rao Vs. State of Andhra Pradesh** it was held

at paras 7 and 8 as hereunder :

“The above gives in brief the scheme and provisions of the Act. These provisions show, in our opinion, that the office of Village Munsif under the Act is an office under the State. The appointment is made by the Collector, the emoluments are granted or continued by the State, the Collector has disciplinary powers over the Village Munsif including the power to remove, suspend or dismiss him, the qualifications for appointment can be laid down by the Board of Revenue – all these show that the office is not a private office under a private employer but is in an office under the State. The nature of the duties to be performed by the Village Munsif under different provisions of the law empowering him in that behalf also shows that he holds a public office. He not only aids in collecting the revenue but exercises power of a magistrate and of a Civil Judge in petty cases. He has also certain police duties as to repressing and informing about crime etc.

The learned Advocate-General appearing for respondents 1 to 3 has contended that the expression “office under the State” in Art. 16 has no reference to an office like that of the Village Munsif, which in its origin was a customary village office later organized and regulated by law. His contention is that the expression has reference to a post in a Civil Service and an ex-cadre post under a contract of service, as are referred to in Articles 309 and 310 in Part XIV of the Constitution relating to the services under the Union and the States. He has referred in support of his contention to Ilbert’s Supplement to the Government of India Act, 1915, page, 261, where a similar provision with regard to the Indian Civil Service has been referred to as laying down that “no native of British India..... is by reason only of his religion, place of birth, descent, or colour, or any of them disabled from holding any place, office or employment under His Majesty in India” and has pointed out that the aforesaid provision reproduced Section 87 of the Act of 1833 and historically the office to which the provision related was an office or employment in a Service directly under the East India Company or the Crown. He also referred to Section 298 of the Government of India Act, 1935, which said inter alia that “no subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them disabled from holding any place, office or employment under His Majesty in India” and has pointed out that the aforesaid provision reproduced S.87 of the Act of 1833 and historically the office to which the provision related was an office or employment in a Service directly under the East India

Company or the Crown. He also referred to Section 298 of the Government of India Act 1935, which said inter alia that “no subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India”. The argument of the learned Advocate-General is that Art. 16 embodies the same principle as inspired the earlier provisions referred to above, and like the earlier provisions it should be confined to an office or post in an organized public service or an ex-cadre post under a contract of service directly under the Union or the State. He has further suggested that the deletion of the requirement as to sex in Section 10 of the Act was by reason of Art. 15 and not Art.16 of the Constitution. The argument is plausible, but on a careful consideration we are unable to accept it as correct. Even if we assume for the purpose of argument that Arts. 309 and 310 and other Articles in Chapter I, Part XIV, of the Constitution relate only to an organized public Service like the Indian Administrative Service etc., and ex-cadre posts under a direct contract of service which have not yet been incorporated into a Service, we do not think that the scope and effect of Cls.(1) and (2) of Article 16 can be cut down by reference to the provisions in the Services Chapter of the Constitution.”

16. Submissions at length were made that inasmuch as these are rules though issued in exercise of powers under Article 162 of the Constitution of India, they are binding on the Government. Reliance was placed on **Ramana Vs. I.A. Authority of India** . The learned Counsel also placed strong reliance on **Minerva Mills Ltd. Vs. Union of India** , **State of Kerala Vs. N.M. Thomas** , **M.A. Rasheed Vs. State of Kerala** , **Dattatreya Vs. State of Bombay** , **State of U.P. Vs. O.P. Gupta and Indra Sawhney's case** referred (5) supra. Submissions at length were made in relation to Article 6(4) and 335 of the Constitution of India. Article 335 of the Constitution of India reads as hereunder :

Claims of Scheduled Castes and Scheduled Tribes to services and posts: The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency

of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.”

Likewise, Articles 16(4) of the Constitution of India dealing with **Equality of opportunity in matters of public employment** reads as hereunder :

“16(4): Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

The other relevant provision of the Constitution Article 162 reads as hereunder :

Extent of executive power of State :- Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

17. In the decision referred (15) supra the Apex Court while dealing with the words “as far as possible” held that it would connote discretion vested in the prescribed authority. In the decision referred (12) supra the Division Bench of this Court to which one of us (P.S.Narayana,J.) was a party while dealing with the nature of A.P. Law Officers (Appointment and Conditions of Service) Rules 2000 in relation to clause (9) observed :

“Concededly the executive instructions regulating the appointment and conditions of service of the Law Officers of

the Government of Andhra Pradesh are not statutory in their nature. The executive instructions were obviously issued by the Government to structure the discretion of those who are involved in the process of making appointments of Law Officers to represent the State and its instrumentalities and other authorities in various Courts including the High Court of Andhra Pradesh and the Andhra Pradesh Administrative Tribunal. The executive instructions clearly provide that the Law Officers i.e., Government Pleader or Assistant Government Pleader and Public Prosecutor or Additional Public Prosecutor or Special Counsel, are required to be appointed by the Government in consultation with the Advocate-General. The Law Officers shall ordinarily be appointed for a term of three years and that engagement may be terminated with one month's notice or by paying one month's honorarium in lieu of one month's notice. The Law Officers so appointed in the High Court, other Courts and Tribunals at the State level shall function under the general superintendence and control of the Advocate-General and they shall be wholly responsible for ensuring all cases entrusted to them are properly prepared and represented in the Courts.

That a cumulative reading of the instructions and the order of appointment in unmistakable terms reveal that the Law Officers are engaged to represent the State and its instrumentalities and other authorities in the cases entrusted to them for and on behalf of the Government and other authorities. They are not recruited and appointed into any service as such. The services of the Advocates are engaged and hired by the Government for a specified period and some cases are entrusted to them to represent the State and its agencies in the Courts. They are not paid any salary. The Government Pleaders appointed in the High Court of Andhra Pradesh and the Andhra Pradesh Administrative Tribunal or in any State level Court or Tribunal are paid a consolidated honorarium of Rs.20,000/- per month.”

Strong reliance was placed on **Indra Sawhney's** case referred (5) supra wherein the Apex Court at para 112 observed :

“While on Art.335, we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for

reservations. For example, technical posts in research and development organizations/ departments/ institutions, in specialities and super-specialities in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g. Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.

As a matter of fact, the impugned Memorandum dated 13th August, 1990 applies the rule of reservation to “civil posts and services under the Government of India” only, which means that defence forces are excluded from the operation of the rule of reservation though it may yet apply to civil posts in defence services. Be that as it may we are of the opinion that in certain services and in respect of certain posts, application of the rule of reservation may not be advisable for the reason indicated hereinbefore. Some of them are (1) Defence services including all technical posts therein but excluding civil posts. (2) All technical posts in establishments engaged in Research and Development including those connected with atomic energy and space and establishments engaged in production of defence equipment. (3) Teaching posts of Professors – and above, if any. (4) Posts in super-specialities and technical subjects. (5) Posts of pilots (and co-pilots) in Indian Airlines and Air India. The list given above is merely illustrative and not exhaustive. It is for the Government of India to consider and specify the service and posts to which the Rule of reservation shall not apply but on that account the implementation of the impugned Office Memorandum dated 13th August, 1990 cannot be stayed or withheld.

We may point out that the services/posts enumerated above, on account of their nature and duties attached, are such as call for highest level of intelligence, skill and excellence. Some of them are second level and third level posts in the ascending order. Hence, they form a category apart. Reservation therein may not be consistent with “efficiency of administration” contemplated by Article 335.

We may add that we see no particular relevance of Article 38(2) in this context. Art. 16(4) is also a measure to ensure equality of status besides equality of opportunity.”

On the strength of these observations submissions at length were made that the post

of a Government Pleader also to be treated as a technical post requiring specialization in the field of law and hence the rule of reservation need not be followed in strict sense. Whether the Government Pleader's post is a technical post or not need not be dealt with at length in the present context in the light of the other findings recorded in relation to G.O.Ms.No.187. In the decision referred (11) supra the Division Bench of this Court while dealing with A.P. Law Officers (Appointment and Conditions of Service) 1989 in relation to Rule 9 and Rule 23(a) held that the Rules are not statutory but only administrative instructions issued under Article 162 of the Constitution of India and removal of the petitioner from the panel of advocates on the ground that he committed serious lapses in conducting cases resulting in loss to the respondent/Corporation by giving one month salary is not liable to be questioned under Article 226 of the Constitution of India and he has no right to be kept in the panel till the expiry of his term. It was also further held :

“In the instant case, of course, no advance notice was given to the writ petitioner as provided in the main part of Rule 9. But, the 3rd respondent had sent a cheque to the petitioner towards one month's remuneration in lieu of one month's notice. The pleas of mala fides and arbitrariness urged by the writ petitioner cannot be gone into by this Court in a summary proceeding under Article 226 of the Constitution particularly in the context of the stand taken by the 3rd respondent in its counter. Out of the pleadings of the parties, many factual controversies arise for resolution and such a resolution could be possible only after permitting the parties to lead evidence and tender themselves for cross-examination by each other. Therefore, we leave open all those factual controversies to be agitated before the competent Civil Court, if the petitioner is so desirous of pursuing his legal remedies.”

18. In the light of the language employed in the present Rules, the question which may have to be decided is whether the present Rules can be said to be of such a mandatory nature that the Government is bound to follow in true letter and spirit the every letter of the rule without any contravention whatsoever or whether these are to be followed as far as possible and an endeavour to be made by the State Government to see that these are followed as far as possible. In substance the question in controversy boils down to the said question. On facts no doubt it had been shown that certain of the G.Ps. had not completed the required years of I.T. assessments. Certain other factual controversies also had been highlighted

inclusive of violation of the rule of reservation and the percentage of posts to be allotted to the S.Cs. and S.Ts. in particular. The change of events if historically traced carefully, it is clear that keeping the nature of professional services expected to be rendered by the concerned Advocates representing the Government causes and also several other practical aspects in strictly adopting the rule of reservation also which had been thought of at a particular point of time had been subsequently relaxed and this intention is explicit and clear in the light of the march of Government in this direction by issuance of successive G.Os. and successive changes as referred to supra. The stand of the Government is being challenged on the ground that this is an arbitrary action violative of Article 14 of the Constitution of India and though the decision is a policy decision the same is amenable for judicial review. This is the short arena in relation to which submissions at length were made by the learned Senior Counsel Sri Tarakam.

19. The power of judicial review in relation to the policy decisions and the limitations thereof are well settled principles. The learned Advocate General also placed strong reliance on the decisions referred to hereunder : **Srilekha Vidyarthi Vs. State of U.P. , State of U.P. Vs. U.P. State Law Officers Association** and the decisions referred (8), (11), (12), (13), (14) and (15) supra. In **G.Rajesh Vs. Bharat Petroleum Corporation Ltd., Mumbai and others** it was held that the measures relating to reservations for Schedule Castes, Schedule Tribes and Backward Classes be undertaken through valid law and reservation not to be discerned through implication and inference and these provisions Articles 15(4) and 16(4) of the Constitution enables the State to undertake certain measures for giving effect to the Directive Principles of State Policy and they cannot be treated as mandatory. The learned Judge also held that the Government has power to make provisions for effecting reservations taking into account several factors and this is a policy decision and Courts cannot direct Government to provide for reservations in favour of a particular category in a specified field of activity and Courts role is to ensure that the provisions so made confirm to principles enshrined in the Constitution and the Courts cannot undertake active role in implementation of the reservations. In **T.Muralidhar and others Vs. State of A.P. and others** it was held that poverty or mere economic backwardness cannot be a criterion for reservations for Articles 15(4) and 16(4) of the Constitution of India and the predominant test is social

backwardness. In **Irrigation Development Employees Association Vs. Government of Andhra Pradesh (Public Enterprises (II) Department** it was held that policy decisions are not static and they have to be evolved from time to time depending upon the exigencies of situation. In **State of Rajasthan Vs. Sevanivatra Karmachari Hitkari Samiti** while dealing with the aspect of policy decision and when it is open to judicial review it was held that the matter of policy decision of the executive must be left to the consideration of the State Government and the wisdom in a policy decision and the Government as such is not justiciable unless such policy decision is wholly capricious, arbitrary and whimsical thereby offending the rule of law as enshrined in Article 14 of the Constitution and such policy decision offends any statutory provisions or the provisions of the Constitution. In **Vijay Lakshmi Vs. Punjab University** it was held that the reservation of certain posts in women's college and hostel as a preventive and precautionary measure against exploitation of girl students being a policy decision of the State Government, the Court cannot sit in Appeal against such policy decision. While dealing with the aspect of judicial review in relation to the liquor policy in **M/s.Ugar Sugar Works Ltd. V. Delhi Administration** the Apex Court observed :

“The challenge, thus, in effect, is to the executive policy regulating trade in liquor in Delhi. It is well settled that the Courts, in exercises of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonable, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating the policy. In tax and economic regulation cases, there are good reasons for judicial restraint, if not judicial deference, to judgment of the executive. The courts are not expected to express their opinion as to whether at a particular point of time or in a particular situation any such policy should have been adopted or not. It is best left to the discretion of the State.”

The undernoted decisions also may be usefully referred to in relation to the limitations while exercising judicial review in the context of policy decisions : **Principal Madhav Institute of Technology and Science Vs. R.S. Yadav , State of Rajasthan Vs. Lata Arun ,**

T.Ramachander Rao Vs. Union of India , Federation of Railway Officers Association Vs. Union of India and Union of India and another Vs. International Trading Co. and another . In N.Dolendra Prasad Vs. Government of Andhra Pradesh while dealing with the aspect of policy decision of the Government and interference by Courts the Division Bench observed :

“It is well settled proposition of law that unless the policy decision of the State is demonstrably capricious or arbitrary and not informed by an reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. The Court is not empowered to determine whether a particular public policy is fair. The administrative action is subject to judicial review only in regard to illegality or irrationality, namely, unreasonableness and procedural impropriety. It is also now settled that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, the Courts are not expected to embark upon uncharted ocean of public policy. Courts are not expected to presume any irregularities or illegalities or unconstitutionality, in the State action unless these are clearly demonstrated. The Courts also cannot substitute their opinion for the bona fide opinion of the State executive. The Courts are only concerned with the fairness of the decision making process. It is also equally true that the Courts cannot strike down a policy decision taken by the State executive merely because the Court is persuaded that another decision might have been fairer or wiser or more scientific or logic.....”.

Certain decisions also may be usefully referred to in relation to this aspect : **State of M.P. v. Nandlal Jaiswal , G.B.Mahajan v. L.Jalgaon Municipal Council , a n d Krishnan Kakkanth v. Government of Kerala** . The principles are well settled and the decisions in relation thereto are too numerous and hence the settled principles need not be repeated again in elaboration.

20. The essentials to be satisfied for issuance of either a writ of mandamus or positive directions while exercising powers under Article 226 of the Constitution of India are well settled and the said principles need no repetition at the hands of this court. In **Union of India Vs. Krishna Reddy** the Apex Court observed at para-13 as hereunder :

“It is well settled by a catena of decisions of this Court that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Therefore, in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. [See Bihar Eastern Gangetic Fishermen Coop. Society Ltd. Vs. Sipahi Singh (AIR 1977 S.C. 2149), Lekhraj Sathramdas Lalvani Vs. N.M. Shah, Dy.Custodian cum Managing Officer (AIR 1966 S.C. 334) and Umakant Saran (Dr.) V. State of Bihar (AIR 1973 S.C. 964)”.

In **Union of India Vs. S.B. Vohra** at paras 12 and 13 it was observed :

“Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King’s Bench (now Queen’s Bench) directing performance of a public legal duty.

A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is a most extensive remedial nature. The object of mandamus is of to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

In **Director of Settlements, A.P. Vs. M.R.Appa Rao** the Apex Court held at para-17 as hereunder :

“Coming to the third question, which is more important from the point of consideration of the High Court’s power for issuance of mandamus, it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and

certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression “for any other purpose”. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression “for any other purpose” in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same within certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such rights has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (**Kalyan Singh Vs. State of U.P.**) . The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.”

The undernoted decisions also may be referred to in the context of the principles in issuance of either a writ of mandamus or a writ of certiorari :

Union of India Vs. Krishna Sharma , Surya Dev Rai Vs. Ramchander Rai , Ranjit Singh Vs. Ravi Prakash , Province of Bombay Vs. Kushaldas S.Advani , T.C. Basappa Vs. T.Nagappa and Dwarka Nath Vs. Income Tax Officer Special Circle D Ward, Kanpur .

In **In Re : Vinay Chandra Mishra** it was observed that the rule of law is the foundation of a democratic society and judiciary is the guardian of the rule of law and hence Judiciary is not only the third pillar but the central pillar of this democratic State and in a democracy like ours where there is a written Constitution it is above all individuals and institutions and where the power of judicial review is vested in the superior Courts, the judiciary has a special and additional duty to perform i.e., to oversee that all individuals and institutions including the Executive and the Legislature act within the framework of not only the law but also the fundamental law of the land and this duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. The role of the Judiciary had been well emphasized by the Apex Court even in **C.Ravichandran Iyer vs. Justice A.M. Bhattacharjee** and **Chandra Shashi vs. Anil Kumar Verma** .

21. Interest of this institution predominantly depends upon the efficient Bar and the Bench. It is needless to say that independence of Judiciary is the core of the working of the division of powers amongst the three wings. If this wing fails the very foundation of the political, executive and the social systems and the other systems as well would be at peril. In that view of the matter too, the policy of reservation may have to be viewed and hence when the State Government had taken a policy decision in this regard the same may have to be decided in the backdrop of the Limitations of judicial review imposed on these Courts by settled principles. The institutional interest to be kept in view and equally so the Constitutional obligations also may have to be followed. The realities of Indian society cannot be lost sight of and Judiciary may have to function in the interest and larger welfare of the society in the

backdrop of the Constitutional obligations enshrined in the Constitution. It is needless to over-emphasize on the role which is expected to be played by the concerned Government Pleaders to represent the cases of Government in this regard.

22. It is no doubt true that in **State of A.P. Vs. Lakshma Reddy and others (W.A.No.139 & 140 of 2003, dated 16-9-2005)** the Division Bench having observed that these matters became infructuous observed that while making appointments to the posts of Public Prosecutors and Additional Public Prosecutors, the instructions laid down in G.O.Ms.No.187 dated 6-12-2000 shall be followed. As can be seen from the said Judgment the same was delivered in the context of Instruction No.7 of the aforesaid G.O. In relation to the interpretation given by the Counsel representing the parties the words “at least three years” are to be understood in ordinary sense and if prior to the appointment the condition of being income tax assesseees for a period of any of the three years is satisfied, it would be sufficient compliance. Section 2(7) of the Income Tax Act defines “assessee” as hereunder :

“assessee means a person by whom any tax or any other sum of money is payable under this Act, and includes

- (a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;
- (b) every person who is deemed to be an assessee under any provision of this Act;
- (c) every person who is deemed to be an assessee in default under any provision of this Act;

Section 139(4) of the said Act reads as hereunder :

“Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment

year or before the completion of the assessment, whichever is earlier :

Provided that where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.”

Submissions at length were made in relation to the expression “assessee” and the learned Counsel representing the Government Pleaders made a serious attempt to convince the Court that in the light of the language of the provisions referred to supra, it can be said that in substance even Instruction 4(3)(c) of the Instructions aforesaid had been satisfied.

23. It is needless to say that the Government functions through human agencies and the persons at the helm of affairs in this regard to be cautious enough to safeguard the interest of the Government, in a way which can be said to be public interest as well, by seeing that proper and suitable persons are appointed as Government Pleaders. Standing at the Bar, efficiency, touch with the work of a particular branch of Law and the other like aspects may have to be considered while making appointments as Government Pleaders so that the Government matters may be properly and effectively represented and argued before the Courts and also with the fond hope that such matters may not suffer due to the inefficiency or otherwise on the part of the Government Pleaders representing such matters.

24. Article 16(4) of the Constitution of India, as already specified supra is an enabling provision and it is for the concerned Government to take a policy decision in relation thereto. There is no Constitutional imperative in relation to the strict enforcement of reservation in the appointment of Government Pleaders of High Court, Administrative Tribunal etc., to Schedule Castes and Schedule Tribes. It is no doubt true that having framed the Rules or issued instructions or guidelines by the State Government, it is not open to the State Government to totally disregard the instructions or guidelines and the same may have to be followed as far as possible and an endeavour to be made in the said direction. By that itself it does not mean that these rules/guidelines/instructions are mandatory in nature and can be enforced by way of a Writ Petition by issuance of either a writ of mandamus or specified

positive directions in this regard. This is the arena wherein the policy decision of the State Government would come into play. It is true that such policy decisions can be challenged only to a limited extent on the ground of arbitrariness being violative of Article 14 of the Constitution of India or otherwise such decisions contravening the other Constitutional imperatives specified by different provisions of the Constitution of India. It is also true that the discretion of the executive cannot be said to be a unfettered discretion despite the fact that these guidelines as such cannot be enforced through the Courts of law by issuance of either writ of mandamus or positive directions. Suffice to state that the wisdom of the State Government not to be doubted in relation to its endeavour to see that the guidelines are followed to the extent possible and this discretion is to be exercised by the State Government in well defined limits. In the light of the journey made by the State Government in relation to this aspect, from the old rules to the present rules and several G.Os. issued in the interregnum it is clear that there is a change and shift in the policy and this change or shift in the policy cannot be said to be arbitrary in the background of certain special features relating to the legal profession, the duties expected to be discharged by such professionals vis-à-vis the causes of the Government which are expected to be represented by the concerned Government Pleaders. The relationship of a client and an Advocate, the duties, obligations etc., in relation thereto also are well settled. In the light of the same, this Court does hope and trust that the State Government concerned may adopt the correct path in the backdrop of the society and the social conditions. Except making the above observations no positive relief as such can be granted or directions can be issued in this regard. In the light of the observations made supra, the Writ Petition is accordingly disposed of. No order as to costs.

25. W.P.M.P.No.7444 of 2005:

In view of the nature of the litigation there cannot be any doubt or controversy that the implead-petitioner also to be brought on record and accordingly the said application is hereby ordered.

Justice J.Chelameswar

Justice P.S.Narayana

Justice B.Seshasayana Reddy

Date : -12-2005

L.R. copy to be marked : YES / No

AM

THE HONOURABLE SRI JUSTICE J.CHELAMESWAR

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

AND

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO.14863 OF 2004

JUDGMENT: (per Justice B.Seshasayana Reddy)

1. I had the benefit of going through the judgment prepared by my learned brother P.S.Narayana,J. I express my inability to agree in respect of not recording a positive finding after noting that Respondents 13, 23, 24 and 29 are not the Income Tax Assesseees for three years preceding their appointment as Government Pleaders. This matter came to be referred to the Full Bench by a Division Bench comprising G.Bikshapathy, J (as he then was) and one of us i.e. P.S.Narayana,J in view of the involvement of certain constitutional questions and considerable importance to be decided especially in the light of the respective pleadings of the parties and submissions advanced by learned counsel on record. My learned brother has referred catena of judgments with regard to the proposition of law as to when a Writ of Mandamus can be granted. I do not want to make the judgment bulky by referring to some more decisions. In STATE OF U.P. v. JOHRI LAL the Apex Court considered the scope and extent of the power of judicial review of High Court contained in Article 226 of the Constitution of India. It has been held therein as follows:

“ **(28)** THE scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of 458 omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court. The limited scope of judicial review succinctly put are :

(I) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(II) A petition for a judicial review would lie only on certain well-defined grounds.

(III) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(IV) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a court is limited to seeing that tribunal functions within the limits of its authority and that its decisions do not occasion

miscarriage of justice.

(V) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies. (See *Ira Munn v. State of Illinois*)”

2. The factual aspects and respective contentions of the learned counsel have been dealt with in great detail by my learned brother P.S.Narayana, J. I do not venture to reiterate them. The preamble of the Constitution of India resolves to secure to all citizens justice social, economic and political and equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains Directive principles of State Policy which are fundamental in the governance of the country and are aimed at securing socio economic freedom by appropriate State action which is complimentary to individual fundamental rights guaranteed in Part III for protection against excess of State action, to realize the vision of the preamble. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government fails to satisfy the test of reasonableness, it would be unconstitutional. It is now well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect the State cannot claim comparison with a private individual even in the field of contract.

3. To give a brief resume of relevant facts, the 1967 Rules pertaining to recruitment of Law Officers in the State of Andhra Pradesh were rules framed under Article 309 of the Constitution. These rules did not make any provision for reservation of posts of law Officers for backward classes, scheduled castes and scheduled tribes or for any other weaker sections of the society. It appears pursuant to a representation made by the President of the Andhra Pradesh Backward Classes Association in 1983, the question about feasibility of making adequate provisions regarding reservations in 1967 Rules was examined by the Government and, as a matter of policy, the Government decided to make provisions for reservation of posts of Law officers for persons belonging to Backward Classes, Scheduled Castes and Scheduled Tribes.

It further appears that before implementation of this Government policy, W.P.No.9652/83 dated 24.1.1984 was filed by the Andhra Pradesh BCs, SCs and STs. Advocates Association for directing the State Government to implement the rule of reservation in favour of Backward Classes, Scheduled Castes and Scheduled Tribes in the matter of appointment of Law Officers, by amending 1967 Rules, if necessary. On 24.1.1984 this Court rendered its decision in W.P.No.9652/83 between **A.P. B.Cs,SCs & STs. Adv.Association and Chief Secy. To Govt.**, and it was directed that:

- i. the Government of Andhra Pradesh shall, in pursuance of the decision already taken by it, make forthwith a provision providing for reservation in favour of Scheduled Castes, Scheduled Tribes and Backward Classes, in the matter of appointment of law Officers in the State. It is for the Government to decide, whether to make such provision by an administrative order – which also is held sufficient for this purpose by the Full Bench of Punjab and Haryana High Court in KANWAL PARKASH V. STATE OF PUNJAB - or by making a rule under the proviso to Article 309 of the Constitution of India. The provision shall make, as already decided by the Government substantially in the same terms as R.22, Andhra Pradesh State and Subordinate Services Rules;
- ii. pending the making of such provision, the Government shall not make any appointment to the category of Law Officers under the A.P. Law Officers (Recruitment, Conditions of Service and Remuneration rules, 1967, in the State of Andhra Pradesh.

By sheer co-incidence, the very next day of the said decision of this Court, the Government issued G.O.Ms.No.14, dated 25.1.1984, introducing the rule of special representation in the 1967 Rules. After allowing the 1967 Rules with amendments carried out in 1984 to prevail for about a period of six years, the State Government with the advice of its Law Secretary decided to repeal the 1967 Rules and to replace them by the impugned Executive Instructions with no provision for reservation of posts of Law Officers for backward classes, scheduled castes and scheduled tribes Advocates and accordingly issued the impugned notification and the order, dated 16.3.1990, giving rise to these questions. A question came up for consideration before the Division Bench as to whether a preferential clause in favour of SC, ST and BC categories would be in substantial compliance of the Constitutional reservation or specific reservation is required to be made to meet the Constitutional obligation. Speaking to the Bench K.M.Agarwal, J stated that we find that the post of a Law Officer is also one of such posts as considered by the Supreme Court in the

said case to be inappropriate for making a provision for reservation. In the light of these facts, the provision now made in the impugned Executive Instructions for giving preferential treatment to persons belonging to B.C., S.C. or S.T. class cannot be said to be inadequate for satisfying the requirement of Art.16(4) of the Constitution, if any. The fathers of the Indian Constitution were well nigh aware of the dangers of giving all pervading powers to any of the three wings of the Constitution; Executive, Legislature and Judiciary, and, therefore, they were meticulous in defining the limits of their respective powers, so as to avoid any possible trespass over the field of others. Accordingly, we cannot direct the Legislature to legislate on any matter, howsoever important it may be, or the Executive to take any particular type of policy decision on any subject whatsoever, though we have powers to strike down any legislation, or executive action on the ground of violation of any of the fundamental rights guaranteed by the Constitution.

4. A question came up for consideration before the Division Bench of this Court in GOVT. OF A.P. V. PUSHPINDAR KAUR as to whether the executive relating to the A.P. Law Officers (Appointment and Conditions of Service) Instructions, 2000 of the Government are statutory in their nature. It has been held in the cited decision as follows:

“ 21. Concededly the executive instructions regulating the appointment and conditions of service of the Law Officers of the Government of Andhra Pradesh are not statutory in their nature. The executive instructions were obviously issued by the Government to structure the discretion of those who are involved in the process of making appointments of the Law Officers to represent the State and its instrumentalities and other authorities in various Courts including the High Court of Andhra Pradesh and the Andhra Pradesh Administrative Tribunal. The executive instructions clearly provide that the Law Officers, i.e., Government Pleader or Assistant Government Pleader and Public Prosecutor or Additional Public Prosecutor or Special Counsel, are required to be appointed by the Government in consultation with the Advocate General. The Law Officers shall ordinarily be appointed for a term of three years and that engagement may be terminated with one month's notice or by paying one month's honorarium in lieu of one month's notice. The Law Officers so appointed in the High Court, other Courts and Tribunals at the State level shall function under the general superintendence and control of the Advocate General and they shall be wholly responsible for ensuring all cases entrusted to

them are properly prepared and represented in the Courts.”

5. A cumulative reading of the instructions in unmistakable terms reveal that the Law Officers of the State are engaged to represent the State and its instrumentalities and other authorities in the cases entrusted to them for and on behalf of the Government and other authorities. They are not recruited and appointed into any service as such. The services of the Advocates are engaged and hired by the Government for a specified period and some cases are entrusted to them to represent the State and its agencies in the courts. They are not paid any salary. The Government Pleaders appointed in the High Court and the Administrative Tribunal or in any State Level Court or Tribunal are paid a consolidated honorarium of Rs.20,000/- per month.

6. Legal profession is essentially a service oriented profession. The, ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before the authorities that be. The services were rendered without regard to the remuneration received or to be received. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. The nature of the service rendered by the lawyers was private till the government and the public bodies started engaging them to conduct cases on their behalf. The government, and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work. This is so even today, though the lawyers on the full-time rolls of the government and the public bodies are described as their law officers. It is precisely for this reason that In the case of such law officers, the saving clause of Rule 49 of the Bar Council of India Rules, waives the prohibition imposed by the said rule against the acceptance by a lawyer of a full-time employment.

7. Learned counsel appearing for the petitioner submits that some of the unofficial respondents are not income tax assesses for three years immediately preceding to

their appointment. Whereas it is contended by learned counsel appearing for the Respondents that what is required under the Instructions, 2000 is that one must be an Income Tax Assessee for a period of atleast three years and not necessarily immediately preceding to the appointment. Para 4(3)(c) of the Instructions, 2000 read as follows:

“(c) is an income-tax assessee for a period of atleast three years prior to his appointment; or”

The requirement is one must be an Income Tax Assessee for a period of atleast three years prior to his appointment. It cannot be inferred that three years must be immediate preceding to the date of appointment. In my considered view, it is suffice if a person is an Income Tax Assessee for a period of three years prior to his appointment. Except Respondent Nos.13, 23, 24 and 29, other unofficial respondents have been Income Tax Assesses for a period of three years or more prior to their appointment. In these circumstances what is the relief that can be granted to the petitioner. The relief sought for in the writ petition is as follows:

“ For the reasons stated in the accompanying affidavit, it is therefore prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction particularly one in the nature of Writ of Mandamus calling for all connected records relating to the appointments of respondents 2 to 30 as Government Pleaders in the High Court of Andhra Pradesh, The A.P. Administrative Tribunal, land Grabbing Court and the Central Administrative Tribunal and declare them as illegal, improper, unjust contrary to law and violative of Articles 15(4), 16(4) & 335 of the Constitution of India and set aside the appointments and consequently direct the 1st respondent herein to make appointments by following the Rule 4(3)©, Rule 7(a), 7(b), 7(c), rule 7(d) of G.O.Ms.No.187 Law Department, dated 6.12.2000 and the A.P. Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case and in the interest of justice and equity.”

8. Undisputedly respondent Nos.13, 23, 24 and 29 were not the Income Tax Assesseees for three years prior to their appointment. As per para 4 of the Instructions 2000, it is the obligation of the Advocate General to prepare a panel of three advocates in advance before the expiry of the term of the incumbents and send the

same to the Government. While preparing the panel, the learned Advocate General has to keep in view the standing of the candidate as well as other requirements stipulated in para 4(3) which reads as under:

“ 4(3) No person shall be included in the panel for appointment as Government Pleader, or Special Counsel unless he,

- a. has atleast ten years standing as an Advocate of a High Court or two or more such High Courts in succession;
- b. is below sixty five years of age on the date of inclusion in the panel, and
- c. is an income-tax assessee for a period of atleast three years prior to his appointment; or

Though there is an infraction of the instructions issued to the Advocate General by the State, in our opinion, those instructions do not confer any enforceable right in favour of a third party nor make the appointments already made in violation of the instructions given to the Advocate General illegal. Eventually, the responsibility of the Advocate General who is not only the first Law Officer of the State, but also a *de jure* member of the Cabinet to choose the right counsel to represent the Government in the Court. If in a given case, the Advocate General is of the opinion that notwithstanding the fact that a member Advocate does not fulfill the stipulations made in the guidelines, the counsel is competent enough to represent the State, it is a matter of the opinion of the Advocate General who is entitled for due weight. Courts would normally be reluctant to interfere with the assessment of the learned Advocate General barring an exceptional case whether the appointment is palpably against the public interest or malafide. In the absence of any such foundation in the writ petition regarding prejudice to public interest and malafides, we do not think it appropriate to interfere with the appointments already made. We leave it to the wisdom of the Advocate General to examine the matter, if he is so advised.

9. With the observations as above, the writ petition is accordingly disposed of. No order as to costs.

Dt: 06-04-2006. (B.Seshasayana Reddy,J)

Tnb

HON'BLE SRI JUSTICE J. CHELAMESWAR

HON'BLE SRI JUSTICE P.S. NARAYANA

HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

W.P.No.14863 of 2004

&

W.P.M.P. No.7444 of 2005

ORDER: (PER THE HON'BLE JC,J)

I had the advantage of going through the two separate judgments rendered by my learned brothers (PSN and BSSR, JJ). Both of them reached a conclusion that no relief as sought by the petitioner can be granted in this writ petition.

I agree with the conclusion reached.

Therefore, the writ petition is disposed of with certain observations recorded by each of the learned judges.

J. CHELAMESWAR, J

6th April, 2006

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